Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

SANTIAGO PABLO-SANCHEZ; MARIA CONSUELO BARRERA-NAVA; FANY PABLO-BARRERA; REYNA PABLO-BARRERA; JORGE PABLO-BARRERA; SANTIAGO PABLO-BARRERA,

Petitioners,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

E. DENNIS MUCHNICKI
(OHIO SUPREME COURT NO. 0024734)
Counsel of Record
5650 BLAZER PARKWAY
DUBLIN, OHIO 43017
(614) 761-9775
edmuch@mac.com

Counsel for Petitioners

September 14, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED FOR REVIEW

Whether, consistent with this Court's holdings in *INS v. Ventura, 537 U.S. 12, 123 S. Ct. 353 (2002) and Gonzales v. Thomas, 547 U.S. 183, 126 S. Ct. 1613 (2006)*, a court of appeals, when reviewing a BIA decision ordering removal, the grounds for which is subject to two possible interpretations, one of which is clearly erroneous, may lawfully select the interpretation of the BIA decision which denies relief to the alien on potentially lawful grounds and affirm the BIA rather than remanding for the BIA to clarify whether its decision was based upon what the reviewing court agrees would be an error of law.

RULE 14(B) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Santiago Pablo-Sanchez who is the petitioner before this Court, was also the petitioner before the United States Court of Appeals for the Sixth Circuit and the respondent before the Board of Immigration Appeals and Immigration Court. In addition to Mr. Pablo-Sanchez, his wife, Maria Consuelo Barrera Nava, and his children, Santiago Pablo-Barrera, Reyna Pablo-Barrera, Fany Pablo-Barrera and Jorge Pablo-Barrerra were also parties to the proceedings below.

2. Eric Holder, Attorney General, who is the respondent on behalf of the United States of America before this Court, was also the respondent on behalf of the United States of America before the United States Court of Appeals for the Sixth Circuit. The Immigration Court and the Board of Immigration Appeals whose final order was the subject of Mr. Pablo's petition for review to the Sixth Circuit are parts of the Executive Office of Immigration Review, an office within the United States Department of Justice which is under the direct supervision of General Holder.

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PETITION FOR A WRIT OF CERTIORARI

Santiago Pablo-Sanchez, a native and citizen of Mexico, respectfully petitions for a writ of certiorari to review the opinion and judgment below of the U.S. Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Sixth Circuit below, dated March 30, 2010, is officially reported at 600 F.3d 592. The opinion is set forth at App. 1a.

The decision and final order of the Board of Immigration Appeals that was the subject of petition for review to the Sixth Circuit has never been officially reported. The case number of this matter before the Board of Immigration Appeals is A095-394-346. The opinion is set forth at App. 16a.

JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit sought to be reviewed was entered on March 30, 2010. Mr. Pablo Sanchez filed a motion for rehearing on May 13, 2010. The motion for rehearing was denied on June 17, 2010. This petition is timely under 28 U.S.C. § 2101(C) and Supreme Court Rule 13.1 because it is being filed within 90 days of the denial of the motion for rehearing. This Court has jurisdiction to review the judgment of the U.S. Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions involved are both portions of the Immigration and Nationality Act. 8 U.S.C. § 1158(b)(1) authorizes the Attorney General to grant asylum to aliens who are "refugees" as defined Section 101(a)(42)(A) of the Act. 8 U.S.C. § 1101(a)(42)(A) defines a "refugee" as an alien who is unwilling or unable to avail themselves of their home country's protection due to persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Those provisions are reproduced at App. 127a.

STATEMENT OF THE CASE

This case arises from the Board of Immigration Appeals' March 10, 2009 final order affirming the April 23, 2007 decision of the Immigration Court, denying Mr. Pablo Sanchez's claim for asylum and withholding of removal to Mexico on the grounds of persecution he suffered in Mexico due to his political affiliation with the Green Party.

Pablo Sanchez testified at his removal hearing that he had been the candidate of the Ecological Green Party for the federal deputy of the thirty-third district in Mexico. (Record Entry No. 11, Transcript of Hearing, Appendix p. 72, App. 63a). For the two months prior to the election, Mr. Pablo gave public speeches once or twice a week. (Record Entry No. 11, Transcript of Hearing, Appendix pp. 90, 96, App. 87a, 93a). Notice of Mr. Pablo's public speeches was published in the local newspaper, including Mr.

Pablo's name. (Record Entry No. 11, Transcript of Hearing, Appendix p. 96, App. 93a).

About a month before the election, at a meeting of the Ecological Green Party, a man from the opposing PRI political party stood up and threatened the candidates, including Mr. Pablo. (Record Entry No. 11, Transcript of Hearing, Appendix p. 92, App. 89a). After the elections, Mr. Pablo began receiving frequent threatening phone calls. (Record Entry No. 11, Transcript of Hearing, Appendix p. 74, App. 66a). The person calling Mr. Pablo Sanchez would tell him to leave the party. *Id.* The phone calls warned Pablo Sanchez that if he did not stop participating with the party, things would not go well for his family. *Id.* Mr. Pablo recognized the voice of the caller as the PRI party member who had stood up at the meeting and yelled for the Green Party to stop its activities. (Record Entry No. 11, Transcript of Hearing, Appendix p. 76, App. 69a-70a).

Pablo Sanchez left the Green Party because of the threats, but the threats to him and his family did not stop. (Record Entry No. 11, Transcript of Hearing, Appendix p. 76-77). In March of 1996, Mr. Pablo was assaulted when he went to the bank. *Id.* Pablo's face was covered, and he was beaten. *Id.* Pablo Sanchez heard the voice saying, "Is that what you wanted, huh? Is that what you were asking for? You want more of this?" The voice also said, "This is the first time. The second time will be even better." (Record Entry No. 11, Transcript of Hearing, Appendix p. 78, App. 71a-72a). Pablo Sanchez indicated that he recognized the voice because it was the same voice that he had heard while campaigning. *Id.*

In November of 1996, Mr. Pablo Sanchez was attacked again. (Record Entry No. 11, Transcript of Hearing, Appendix p. 78, App. 72a-73a). His face was covered, and he was beaten. *Id.* He could not see his attackers, but he could hear three to four people. Among them, Pablo Sanchez recognized the particular voice of the man that had been calling him and had made threats during the Green Party rally. *Id.* Mr. Pablo Sanchez explained that he was not involved in any organizations or activities other than the Green Party that would have provoked people to threaten or attack him. (Record Entry No. 11, Transcript of Hearing, Appendix pp. 79-80, App. 73a-74a).

The phone calls threatening Mr. Pablo and his family continued. (Record Entry No. 11, Transcript of Hearing, Appendix p. 79, App. 74a). Pablo Sanchez stated that he had no doubt that the voice making the threatening phone calls was the same as that of his attacker. *Id.* After continuing to receive threats following the attack in November of 1996, Pablo Sanchez made the difficult decision to leave his family. (Record Entry No. 11, Transcript of Hearing, Appendix p. 80, App. 74a-75a). Mr. Pablo Sanchez came to the United States in April of 1997. *Id.* However, the threats to his family did not stop after he left Mexico. *Id.*

Pablo's wife, Ms. Barrera, would call Mr. Pablo Sanchez while she was very upset, crying because she had received threatening phone calls. *Id.* The calls would tell Ms. Barrera that they knew how she was dressed, what she was doing, and that they were going to go to her house and come after her. *Id.* Ms. Barrera informed Pablo Sanchez that their daughter ran home from school and said that she was followed. *Id.* Ms.

Barrera also told Pablo that she saw people very close to the house, watching it. (Record Entry No. 11, Transcript of Hearing, Appendix p. 82, App. 76a). Pablo Sanchez was informed by his wife that these occurrences were increasing in frequency. (Record Entry No. 11, Appendix p. 99, App. 76a).

Then Ms. Barrera received a phone call threatening that she would be receiving a visit. (Record Entry No. 11, Transcript of Hearing, Appendix p. 112, App. 111a-112a). One night while the children were sleeping, there was an intruder inside the home that Ms. Barrera assumed was the aforementioned visitor. *Id.* The intruder was a thin, strong man who raped Ms. Barrera. *Id.* During the attack, the man said to her what she had heard said to her husband, "You see, you see." (Record Entry No. 11, Transcript of Hearing, Appendix p. 116, App. 116a). Because of that, she knows that the rape was related with the phone calls that told her she would be receiving a visit. *Id.* It was not long after the rape that Ms. Barrera brought her children to the United States because she did not want her daughters to have a similar experience. (Record Entry No. 11, Transcript of Hearing, Appendix p. 115, App. 115a).

REASONS FOR GRANTING THE PETITION

In *INS v. Ventura, 537 U.S. 12, 123 S. Ct. 353 (2002)*, and *Gonzales v. Thomas, 547 U.S. 183, 126 S. Ct. 1613 (2006)*, this Court underscored the importance of preventing the federal courts from inappropriately intruding on the administrative system for processing of asylum claims the operation of which is assigned by statute to the Attorney General of the United States. In both cases, this Court reversed decisions of courts of

appeal that prematurely addressed issues that should have been resolved in the first instance by the Board of Immigration Appeals. In *Ventura, supra, 537 U.S at 16, 123 S. Ct. 355*, this Court emphasized that there is no reason for the appellate courts to depart from the well-established rule that courts should refrain from attempting to substitute their judgment for that of administrative agencies concerning matters assigned by statute to the agencies.

As a result, since *Ventura, supra*, and *Thomas, supra*, federal courts have repeatedly recognized that they should address the actual reasons advanced by the BIA for its action rather than searching for other possible justifications for the agency action. *See, Galves-Vergara v, Gonzales, 484 F.3d 798, 803, fn. 6 (5th Cir. 2007); Chuhwu v. Attorney General, 484 F.3d 185, 193 (3d Cir. 2007); Mouawad v. Gonzales, 485 F.3d 405, 413-14 (8th Cir. 2007); Singh v. Dept. of Justice, 461 F.3d 290, 294 fn, 3 (2d Cir. 2006); Banks v. Gonzales, 453 F.3d 449, 451 (7th Cir. 2006); Altamirano v. Gonzales, 427 F.3d 586, 595 (9th Cir. 2005); Dong Sik Kwon v. INS, 646 F.2d 909, 916 (5th Cir. 1981)*. Perhaps the Second Circuit best summarized the fundamental rule as follows:

> It is not the function of a reviewing court in an immigration case to scour the record to find reasons why a BIA decision should be affirmed. Rather, we take the Board's decision as we find it, and if the reasoning it advances for denying a petitioner's claim cannot support the result, we will vacate the decision.

Wu v. INS, 436 F.3d 157, 164 (2d Cir. 2006).

Indeed, outside of the Sixth Circuit from which this case arises, the federal courts of appeals have repeatedly held that where the BIA's decision is unclear or ambiguous as to its reasoning process, the case should be remanded to the BIA for it to clearly explain its rationale. For example, in *Brucaj v. Ashcroft, 381 F.3d 602, 610-611 (7th Cir. 2004),* the Seventh Circuit noted that there were at least three possible interpretations of the cryptic reasons given by the BIA for rejecting a humanitarian asylum claim. The court noted that while one interpretation of the BIA's rationale could reflect a lawful exercise of administrative discretion, another interpretation of the BIA's rationale "erected artificial barriers to relief that are not grounded in statute, regulation or case law". *Id. at 611.* Thus, the Court remanded the case to the BIA for the Board to clarify whether its decision rejecting the asylum claim was based upon lawful grounds.

In a similar manner, the Second Circuit in *Zhao v. U.S. Dept. of Justice 265 F.3d 83, 95-97 (2d Cir. 2001)* dealt with a situation where it was unclear as to whether the BIA had adopted a factual finding of the immigration judge concerning whether the alien's wife had been sterilized. Furthermore, depending upon whether the Board did or did not adopt the that finding, the BIA's decision would be either lawful or an abuse of discretion. As a result, the Second Circuit noted that the "[f]ailure to explain a decision adequately provides a ground for reversal". *Id. at 97.* Therefore, the court reversed the BIA and remanded with instructions for the Board to clarify its reasoning concerning whether ii had adopted the Immigration Judge's factual findings. See also *Hernandez v. Holder, 579 F.3d 864, 876 (8th Cir. 2009).*

While the situation presented by the case at bar represents the same type of situation as existed in the cases discussed above, the Sixth Circuit, unlike the Second, Seventh and Eighth Circuits, proceeded to devise a way to interpret the BIA's decision to create a lawful basis for denial while recognizing that the literal interpretation of the decision as the Board had written it was unlawful because it would have created a new rule of law that evidence of the persecutor's motive must be demonstrated at the moment of actual persecution. *Pablo-Sanchez, supra, 600 F.3d at 596.*

Instead of reviewing the decision as it is written by the Board, the Sixth circuit resorted to an "interpretation" of the BIA's decision based upon the assumption that first of the two key paragraphs is a discussion of applicable law and the second paragraph is a discussion of the facts in the record as applied to the law. *Id. at 597*. Unfortunately the court below did not point to anything in the Board's actual language used that demonstrated that the court's interpretation was what the BIA intended. Therefore, the Sixth Circuit's approach in the case at bat stands in stark contrast to the approached encapsulated in the Second Circuit's admonition that the courts should "take the Board's decision as we find it", rather than attempting to scour the record to find reasons why a BIA decision should be affirmed". *Wu, supra at 164.*

As a result, the Sixth Circuit's decision below in the case at bar sows confusion among the federal circuits as to the proper role for the federal courts in reviewing poorly drafted, ambiguous BIA decisions. Rather than vacating and remanding such decisions to the Board for clarification so as to assure proper consideration of facts and law concerning the life or death issues that

are frequently involved in asylum claims as has been the well established past practice, the decision below suggest a new approach of deconstructing BIA decisions so as to create anew a lawful basis for denial of asylum claims regardless of whether that was the BIA's intent.

Therefore, in order to maintain consistency among the circuits and assure that all circuit courts of appeals respect the limitations on judicial review imposed by this Court's decisions in *Ventura, supra*, and *Thomas, supra*, a writ of certiorari should issue to the Sixth Circuit vacating its decision below and directing it to reverse the BIA's decision in this case and remand it the matter to the Board for further proceedings consistent to clarify its analysis of Pablo-Sanchez's claim of political persecution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

E. DENNIS MUCHNICKI
(Ohio Supreme Court No. 0024734)
Counsel of Record
5650 Blazer Parkway
Dublin, Ohio 43017
(614) 761-9775
edmuch@mac.com

Counsel for Petitioners

APPENDIX

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APPENDIX A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 10a0087p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 09-3301

[Filed March 30, 2010]
[As Corrected March 31, 2010]

SANTIAGO PABLO-SANCHEZ, MARIA CONSUELO BARRERA-NAVA, FANY PABLO-BARRERA, REYNA PABLO-BARRERA, JORGE PABLO-BARRERA, SANTIAGO PABLO-BARRERA, *Petitioners,*	)
v.	)
ERIC H. HOLDER, JR., Attorney General, *Respondent.*	)

On Petition for Review of an Order
of the Board of Immigration Appeals.
Nos. A095-394-346/347; A072-415-044/045/046/047.

Argued: March 9, 2010

Decided and Filed: March 30, 2010

Before: GIBBONS, SUTTON and WHITE, Circuit Judges.

COUNSEL

ARGUED: E. Dennis Muchnicki, LAW OFFICE, Dublin, Ohio, for Petitioners. Jeffrey R. Meyer, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent. **ON BRIEF:** E. Dennis Muchnicki, LAW OFFICE, Dublin, Ohio, for Petitioners. Jeffrey R. Meyer, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

OPINION

SUTTON, Circuit Judge. Santiago Pablo-Sanchez, his wife and four children, all natives and citizens of Mexico, ask us to review a decision of the Board of Immigration Appeals denying withholding of removal. Because the BIA permissibly determined that Pablo-Sanchez did not suffer mistreatment on account of his political opinions, we deny the petition.

I.

In 1994, Pablo-Sanchez, a well-to-do artist and business owner, campaigned as the Green Party candidate for a seat in Mexico's Congress. His

campaign encountered stiff opposition from the then-incumbent PRI party. Hecklers, says Pablo-Sanchez, threatened him at his campaign rallies, and he received phone messages demanding that he "stop participating with this party or things w[ill] not go well for [your] family." A.R. 177. One of the hecklers, whom Pablo-Sanchez believes was affiliated with the PRI, had a distinctive voice, which Pablo-Sanchez described as "hoarse and deep . . . and strident." A.R. 179. Pablo-Sanchez lost the election and soon left the Green Party due to the harassment.

In March 1996, about a year and a half later, Pablo-Sanchez visited a bank. After he left the bank carrying a large amount of cash, muggers covered his face and assaulted and robbed him. As his assailants beat him, Pablo-Sanchez says he heard one of the muggers say in a familiar voice, the same one he remembered from the campaign trail, "is that what you wanted, huh, is that what you were asking for, you want more of this." A.R. 180–81. Later, in November of that year, Pablo-Sanchez was mugged and beaten a second time, again, according to his original application, after going to a bank, and again he heard "exactly the same voice" threaten him during the assault. A.R. 181. During roughly the same time period, a telephone caller with the familiar deep voice threatened Pablo-Sanchez and his family. Pablo-Sanchez reported the muggings and threatening phone calls to the police, but he had "little information for them," and they never caught the criminals. A.R. 264. The police did not investigate his claims, he believes, because he did not bribe them.

In April 1997, Pablo-Sanchez left Mexico and illegally entered the United States. His wife and children remained in Mexico while gathering resources

to come to the United States, and they continued to receive threatening phone calls. Maria Consuelo Barrera-Nava, Pablo-Sanchez's wife, testified that the phone calls began to include details such as what she was wearing that day and what time she had arrived home, suggesting that the individuals responsible for the call were watching her home. Barrera-Nava described the telephone harasser as having "a hoarse voice but it was at the same time strident." A.R. 214. The harassment peaked when, after a telephone message promising a "visit," an intruder entered the family's home at night and raped Barrera-Nava. A.R. 214–15. When she reported the sexual assault to the police, they "laugh[ed]" and "li[t] a cigarette." A.R. 216. In January 1998, Barrera-Nava and the children illegally entered the United States, joining Pablo-Sanchez.

In January 2002, Pablo-Sanchez applied for asylum. He waited nearly five years to file his application, he says, because he could not find anyone bilingual until then. In his 2002 application, he enlisted the help of "Mr. Viatoro," who promised to be a "notario" versed in immigration law. A.R. 185, 202. Signed by Pablo-Sanchez alone, the application said nothing about political activity or persecution but instead said that "criminals" were responsible for the harassment. A.R. 447–49. At Viatoro's advice, Pablo-Sanchez says, he omitted any mention of politics. When interviewed by an asylum officer in July 2005, Pablo-Sanchez claimed not to have been involved in politics but instead said he fled from Mexico due to frequent criminal activity against business owners.

In June 2006, Pablo-Sanchez amended his asylum application, this time with the help of counsel. While

his original application emphasized that he was on business when mugged and included no mention of the recognizable voice, his amended application described his political activities in detail and did not say that criminals targeted him due to his business interests.

In April 2007, Pablo-Sanchez and his family appeared before the IJ and testified consistently with the amended application, conceding removability, but asking for asylum, withholding of removal and protection under the Convention Against Torture. The IJ rejected the asylum application because Pablo-Sanchez had waited more than one year after entering the country to file it. *See* 8 U.S.C. § 1158(a)(2)(B). Because Pablo-Sanchez's hearing testimony and amended application differed so dramatically from his original application, the IJ found that Pablo-Sanchez was not a credible witness and denied withholding of removal on that ground. Alternatively, the IJ concluded that, even if Pablo-Sanchez's testimony had been credible, he was not entitled to withholding of removal because the alleged harassment was not "on account of" his political opinions. 8 U.S.C. § 1101(a)(42)(A); *see id.* §§ 1158(b)(1)(B), 1231(b)(3). As for the claim under the Convention Against Torture, the IJ ruled that Pablo-Sanchez had not proved that he or his family faced torture at the hands of, or with the acquiescence of, public officials.

Pablo-Sanchez appealed the IJ's decision to the Board of Immigration Appeals. Although the Board thought the IJ had erred in disbelieving Barrera-Nava's rape testimony, it affirmed his credibility determination as to Pablo-Sanchez, reasoning that the IJ had "not unreasonabl[y]" interpreted Pablo-Sanchez's inconsistent accounts. A.R. 5. It

alternatively agreed with the IJ that, even assuming credibility, Pablo-Sanchez had not proved (1) that he and his family suffered past persecution on account of his politics, (2) that he and his family faced a likely threat to their lives and freedom upon return to Mexico on account of his politics, (3) that he could not avail himself of protection from the Mexican government and (4) that he and his family qualified for protection under the Torture Convention. Pablo-Sanchez timely seeks review of the Board's decision, challenging only the adverse credibility determination and the denial of withholding of removal.

II.

Because the Board "issue[d] a separate opinion, rather than summarily affirming" and adopting the IJ's decision, we review the Board's decision "as the final agency determination." *Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009). We review agency factual findings, whether made by the Board or the IJ, under the deferential substantial-evidence standard, meaning that the findings are "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); *see Khalili*, 557 F.3d at 435; *Ben Hamida v. Gonzales*, 478 F.3d 734, 736 (6th Cir. 2007) (factual findings include credibility determinations).

To qualify for withholding of removal, Pablo-Sanchez must demonstrate that he faces a "clear probability" of "persecution" based on his "race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A); *Kouljinski v. Keisler*, 505 F.3d 534, 544 (6th Cir. 2007). The "clear probability" standard asks more of the

applicant than the "reasonable possibility" standard for obtaining asylum because it requires the applicant to show that "it is more likely than not" that his life or freedom would be threatened by persecution if he returned to his home country. *Al-Ghorbani v. Holder*, 585 F.3d 980, 993–94 (6th Cir. 2009) (quotation marks omitted). An applicant who proves *past* persecution on account of his political opinion merits a presumption of a "well-founded fear of [suffering] future persecution." 8 C.F.R. § 208.13(b)(1). In this instance, Pablo-Sanchez challenges the BIA's resolution of his arguments about past persecution, arguing that the evidence established past persecution based on a protected ground and therefore entitled him to a presumption of future persecution.

Under these circumstances, to be eligible for relief or at least further inquiry on remand, Pablo-Sanchez must show that a reasonable adjudicator would be compelled to conclude that (1) his testimony was credible and (2) he suffered from past persecution based on his political opinions. If he fails on either point, his petition must be rejected.

Even if we accept Pablo-Sanchez's credibility for the sake of argument, he cannot show that the evidence compels us to conclude that his past mistreatment was on account of his political opinion. A petitioner must provide some evidence of his persecutor's motive, "direct or circumstantial." *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). "[I]t is not enough to present evidence that the applicant *had* a political opinion . . . . Evidence must be presented which suggests that the applicant was persecuted *on account of* or *because of* the political opinion." *Marku v. Ashcroft*, 380 F.3d 982, 986 (6th Cir. 2004).

The sole link between Pablo-Sanchez's political opinions and the assaults and threatening phone calls was a deep and strident voice he thought he recognized from one of his campaign rallies 18 months earlier. Inferring a motive from this kind of evidence requires several inferential leaps that strain the boundaries of circumstantial evidence. More to the point, any inferences we might draw from this effort at voice identification turn on permissible inferences, not mandatory ones.

Even if we assumed that Pablo-Sanchez's harasser and the campaign rally heckler were one and the same, we still would have to infer that he assaulted and robbed Pablo-Sanchez out of political animus. That must be the case, Pablo-Sanchez says, because he "had no other enemies." A.R. 182. But one does not need an enemy to be the victim of a robbery. One needs money. And Pablo-Sanchez had plenty of that when he was mugged, because he had just left a bank after making substantial cash withdrawals before the first robbery and, according to his original application (and not contradicted in his second), he had just left a bank before the second robbery. Thus, when the assailants targeted Pablo-Sanchez for robbery and telephone harassment, it is just as likely (if not more likely) that they were motivated by his wealth as by the partisan affiliation he had renounced 18 months earlier. So long as that is the case, it is not possible to second guess the BIA's judgment on the ground that a reasonable adjudicator would be "compelled to conclude to the contrary."

While the sexual assault against Pablo-Sanchez's wife was a far more offensive crime, it has a far more attenuated connection to his political opinions.

Barrera-Nava "kept a distance" from her husband's political activities, A.R. 211, and linked her telephone harasser to her husband's politics only by offering a description of a deep voice that matched the description offered by Pablo-Sanchez. Perhaps as a result, one might say, she could link her rape to the telephone harassment. But she offered no description of the rapist's voice, much less any reason for thinking that the rapist was motivated by political animus, as opposed to the perversity normally underlying such crimes.

Pablo-Sanchez is right that the "context of the applicant's situation," *Gilaj v. Gonzales*, 408 F.3d 275, 285 (6th Cir. 2005) (per curiam), may permit the Board to connect the dots of circumstantial evidence and find persecution on account of a protected ground, *see Bu v. Gonzales*, 490 F.3d 424, 430 (6th Cir. 2007). But to say that the Board could find circumstantial proof of persecution in a given case is not to say that it must—and that, regrettably for Pablo-Sanchez, is the only inquiry with which we are tasked.

But wait, Pablo-Sanchez says, there is more: In rejecting his petition, the Board "[i]nvented" a "novel, unprecedented position that there is no nexus between persecution and a protected ground *unless* the persecutor stat[ed] his motivations while . . . in the act of persecuting." Br. at 20, 22. That, indeed, would be a novel rule—and an incorrect one to boot. While it often will be the case that the surrounding circumstances of an act of persecution (a physical assault *during* a demonstration or the words *accompanying* a physical assault after a demonstration) will reveal a persecutor's motive, that need not always be the case. What is a frequent way of proving motive is not the

only way. One premise of Pablo-Sanchez's argument, then, is correct.

The other premise is not, however. The Board never announced any such rule. In full, its two-paragraph analysis of the past-persecution claim reads:

> Even if we assume the respondent is credible, the Immigration Judge did not err in concluding that the respondent failed to provide a nexus between his political affiliation and the events that occurred in Mexico (NOA; I.J. at 17, 19). In order to demonstrate that an applicant has been persecuted on account of a political opinion, evidence must be presented which suggests that the applicant was persecuted "on account of" the actual or imputed political opinion. *See Marku v. Ashcroft*, 380 F.3d 982, 986 (6th Cir. 2004). Thus, an applicant must show that his actions were interpreted as political by the alleged persecutors. *See id.* at 987. An applicant is not expected to provide direct proof of the alleged persecutor's motive, but must show some evidence of it, direct or circumstantial (Respondent brief at 19). *Id.*
>
> In this case, the lead respondent testified that during his alleged incidents of physical harm, he recognized the deep, hoarse voice of the political opponent previously heard while he campaigned as a Green Party candidate in 1994 (Respondent brief 19; Tr. at 38, 41–44, 57–60). The lead respondent also stated that but for his political activities which ended in 1994, he had no reason to suffer or fear harm (Respondent brief at 19; I.J. at 6; Tr. at 44–45). The lead

> respondent's wife also stated that the telephone threats she received after April 1997, and the voice heard outside her house, were from a man with the same hoarse, deep voice described by her husband (Respondent brief at. 19; Tr. at 75–76). The lead respondent's wife related that she believed she identified her rapist because on one occasion, the caller with the hoarse, deep voice, expressed that she would be receiving a visitor (Respondent Br. at 19; Tr. at 81). The respondents' beliefs however are insufficient to establish the motive of the attackers. In this respect, the Immigration Judge stated that even if a political opponent was responsible for physically harming the respondents, specific references to the respondents' actual or imputed political opinion or membership in a particular social group were never uttered during the aforementioned incidents (Respondent brief at 5–6, 11–12, 20; I.J. at 5, 11, 17–18; Tr. at 42–43, 46, 74, 81). Therefore, the Immigration Judge's finding that the lead respondent had not provided a nexus between the harm suffered and a protected ground is not erroneous."

A.R. 5.

The first paragraph of this analysis describes the legal requirements for establishing a claim of past persecution, and the Board plainly invents no new rule of proof in doing so. It correctly says that "[a]n applicant *is not expected* to provide *direct proof* of the alleged persecutor's motive," whether before, during or after the persecution, "but must show some evidence of it, direct or circumstantial." (Emphasis added). That an applicant need not provide "direct proof" of motive

negates the subsidiary possibility of requiring an applicant to provide direct proof during the act of persecution. The second paragraph of this analysis applies the law to the facts, and the Board properly explains that the record contains no evidence of motive since Pablo-Sanchez's short stint in politics in 1994, including any evidence of motive that could have come during the acts of violence and harassment.

If read by themselves, it is true, the last two sentences of the second paragraph might support Pablo-Sanchez's reading. But context is everything. When read in the surroundings of the full two-paragraph analysis, the two sentences do not indicate that the Board, in applying the law to the facts of the case, suddenly invented a new persecutor-motive rule. The Board does not cite any cases, only the record, in making these points, indicating it was applying the previously announced, and correctly announced, legal principles identified in the first paragraph of its analysis. One of the record citations, moreover, is to the IJ's opinion at the very pages (IJ at 17–18) where the IJ properly speaks about the absence of any evidence of political motive in connection with any of the assaults and where the IJ does not say that cognizable evidence of political motive may arise *only during* an act of persecution. *See Khalili*, 557 F.3d at 435 ("To the extent the BIA adopted the immigration judge's reasoning, however, this Court also review the immigration judge's decision."); *Joseph v. Attorney General*, 421 F.3d 224, 226 n.4 (3d Cir. 2005) ("Although we are reviewing the decision of the BIA, not that of the IJ, the BIA's ruling cannot be understood in a vacuum, given its analysis. Thus, we must refer to the IJ's analysis in order to provide the

proper context and background for our analysis of the BIA's ruling.").

When all is said and done: the alleged persecution took place more than a year and a half after Pablo-Sanchez ended his brief foray in politics; the evidence of motive required the factfinder to jump through several inferential hoops; and run-of-the-mine criminal depravity by itself provides at least as plausible an explanation, if not a more plausible explanation, for the unfortunate mistreatment of Pablo-Sanchez and his family. That does not suffice to conclude that the Board necessarily decided this case wrongly.

III.

For these reasons, we deny the petition for review.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 09-3301

[Filed March 30, 2010]

SANTIAGO PABLO-SANCHEZ, MARIA CONSUELO BARRERA-NAVA, FANY PABLO-BARRERA, REYNA PABLO-BARRERA, JORGE PABLO-BARRERA, SANTIAGO PABLO-BARRERA, Petitioners,	)
v.	)
ERIC H. HOLDER, JR., Attorney General, Respondent.	)

Before: GIBBONS, SUTTON and WHITE, Circuit Judges.

JUDGMENT

THIS MATTER came before the court upon a petition for review by Santiago Pablo-Sanchez, Maria Consuelo Barrera-Nava, Fany Pablo-Barrera, Reyna Pablo-Barrera, Jorge Pablo-Barrera and Santiago Pablo-Barrera of an order by the Board of Immigration Appeals.

UPON FULL REVIEW of the record and the briefs and arguments of counsel, we uphold the decision of the Board of Immigration Appeals, and accordingly:

IT IS ORDERED that the petition for review is DENIED.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Date: MAR 10 2009

Files: A095 394 346 - Cincinnati, OH
A095 394 347
A072 415 044
A072 41 5 045
A072 415 046
A072 415 047

In re: SANTIAGO PABLO-SANCHEZ
MARIA CONSUELO BARRERA-NAVA
FANY PABLO-BARRERA
REYNA PABLO-BARRERA
JORGE PABLO-BARRERA
SANTIAGO PABLO-BARRERA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: E. Dennis Muchnicki, Esquire

ON BEHALF OF DHS: Veronica Cromwell
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; Convention Against Torture

On April 23, 2007, an Immigration Judge found the respondents removable as charged, denied their application for asylum pursuant to section 208(a) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a), denied the lead respondent's application for withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and 8 C.F.R. §§ 1208.16, 1208.18, and ordered them removed from the United States. The respondents, through counsel, have appealed. The appeal will be dismissed.

The respondents claim persecution and a well-founded fear of persecution on account of political opinion and membership in a particular social group. Specifically, the lead respondent, a 50-year-old native and citizen of Mexico, asserts that he was persecuted and fears persecution and torture because he was politically involved with the Mexican Green Ecological Party.

We affirm the Immigration Judge's conclusion that the respondents did not demonstrate by clear and convincing evidence that their asylum application was

filed within 1 year of their arrival to the United States (I.J. at 16-17, 19-21). *See* section 208(a)(2)(B) of the Act, 8 U.S.C. § 1158(a)(2)(B). In this regard, the lead respondent claims that he arrived to the United States on or about April 1997, and that his wife and children arrived the following year (Respondent brief at 2, 6, 13; I.J. at 3, 5-6, 8, 16; Tr. at 35, 79-80). The respondents initially filed their asylum application on January 30, 2002 (Respondent brief at 6; Exh. 2; I.J. at 3, 15-16). The lead respondent has not shown extraordinary circumstances relating to the delay in filing the application in that he claims he did not know how to file, did not speak English and was afraid (Respondent brief at 6-7; I.J. at 16-17; Exh. 2; Tr. at 67). *See* section 208(a)(2)(D) of the Act, 8 U.S.C. § 1158(a)(2)(D); 8 C.F.R. § 1208.4(a)(5). Therefore, the Immigration Judge did not err in finding that the respondents' application for asylum is time-barred as it was filed beyond the 1-year filing deadline and that no exceptions to the filing requirement are present.

Turning to the lead respondent's application for withholding of removal, he contests the Immigration Judge's adverse credibility determination (Respondent brief at 24; I.J. at 14-15, 20). We agree with the lead respondent on appeal that one aspect of the Immigration Judge's credibility determination is clearly erroneous because he noted that the lead respondent's wife failed to mention prior to the hearing that she was raped (I.J. at 15). An asylum applicant is not required to provide an exhaustive, detailed list of all incidents of persecution in the asylum application (Respondent brief at 14). *Vasha v. Gonzales*, 410 F.3d 863, 872 (6th Cir. 2005). Indeed, the purpose of holding a removal hearing is not simply to reiterate the statements made in the asylum application, but rather

to allow an alien "to present evidence on the alien's own behalf" including to supplement statements made in the application itself with additional details or incidents (Respondent brief at 15). *Id.*

In this case, the lead respondent's wife stated that she did not mention the rape previously because she did not want her family to learn about the incident (Respondent brief at 17; Notice of Appeal (NOA) (Form EOIR-26)). Because nothing in the record is inconsistent with the lead respondent's wife's testimony of the specific event at the removal hearing, the omission of the collateral incident cannot form the basis for an adverse credibility determination. *See id.* Moreover, the Immigration Judge clearly erred in discrediting the lead respondent's wife's claim of rape because his belief that a woman should have revealed the rape to her family before disclosing it to him is based on his personal belief (Respondent brief at 17-18; I.J. at 10-11, 15-16, 18). *See Alexandrov v. Gonzales*, 442 F.3d 395, 408 (6th Cir. 2006) (finding that an adverse credibility determination is not supportable if based on pure speculation).

Nevertheless, we affirm the Immigration Judge's credibility determination. An Immigration Judge's adverse credibility finding must be supported by specific, cogent reasons and relate to issues which go to the heart of the applicant's claim. *Sylla v. INS*, 388 F.3d 924, 925-26 (6th Cir. 2004). In particular, the Immigration Judge's adverse credibility finding is supported by his noting that the lead respondent omitted from his initial asylum application that he was politically active with the Mexican Green Ecological Party in 1994 (Respondent brief at 15-16, 18; I.J. at 14-15; Exhs. 2,4, 6; Tr. at 47-48, 64-69). *See Shkabari v.*

Gonzales, 427 F.3d 324, 329 (6th Cir. 2005) (stating that discrepancies that cannot be viewed as attempts by the applicant to enhance his claims of persecution have no bearing on credibility).

The lead respondent explains that a notario unscrupulously prepared his initial asylum application and thus omitted the information (Respondent brief at 6-8, 15-16, 18-19; NOA; I.J. at 6, 8, 15; Tr. at 47-48, 64-66, 68-69). Notwithstanding the lead respondent's explanation, the Immigration Judge observed that the omission supports an adverse credibility finding because he had signed the application and was thus responsible for its contents (I.J. at 15; Tr. at 35). *See Liti v. Gonzales*, 411 F.3d 631, 637 (6th Cir. 2005) (stating that omissions from an asylum application may support an adverse credibility finding as long as they are substantially related to the asylum claim); *see also Amir v. Gonzales*, 467 F.3d 921, 925 (6th Cir. 2006) (finding no credibility where conflicts existed between applicant's application for asylum and his testimony as well as his attempts to explain away inconsistencies by stating that application concerned events that might happen or had happened to others and that he did not mean to use the application that was filed). Moreover, an asylum applicant's plausible explanation for an inconsistency will not overcome an adverse credibility finding if the Immigration Judge's "contrary interpretation" of the inconsistency is not unreasonable. *Singh v. Ashcroft*, 398 F.3d 396, 402 (6th Cir. 2005). We therefore find no clear error in the Immigration Judge's adverse credibility determination. *See* 8 C.F.R. § 1003.1(d)(3)(i).

Even if we assume the respondent is credible, the Immigration Judge did not err in concluding that the

respondent failed to provide a nexus between his political affiliation and the events that occurred in Mexico (NOA; I.J. at 17, 19). In order to demonstrate that an applicant has been persecuted on account of a political opinion, evidence must be presented which suggests that the applicant was persecuted "on account of" the actual or imputed political opinion. *See Marku* v. *Ashcroft*, 380 F.3d 982, 986 (6th Cir. 2004). Thus, an applicant must show that his actions were interpreted as political by the alleged persecutors. *See id.* at 987. An applicant is not expected to provide direct proof of the alleged persecutor's motive, but must show some evidence of it, direct or circumstantial (Respondent brief at 19). *Id.*

In this case, the lead respondent testified that during his alleged incidents of physical harm, he recognized the deep, hoarse voice of the political opponent previously heard while he campaigned as a Green Party candidate in 1994 (Respondent brief 19; Tr. at 38, 41-44, 57-60). The lead respondent also stated that but for his political activities which ended in 1994, he had no reason to suffer or fear harm (Respondent brief at 19; I.J. at 6; Tr. at 44-45). The lead respondent's wife also stated that the telephone threats she received after April 1997, and the voice heard outside her house, were from a man with the same hoarse, deep voice described by her husband (Respondent brief at 19; Tr. at 75-76). The lead respondent's wife related that she believed she identified her rapist because on one occasion, the caller with the hoarse, deep voice, expressed that she would be receiving a visitor (Respondent brief at 19; Tr. at 81). The respondents' beliefs however are insufficient to establish the motive of the attackers. In this respect, the Immigration Judge stated that even if a political

opponent was responsible for physically harming the respondents, specific references to the respondents' actual or imputed political opinion or membership in a particular social group were never uttered during the aforementioned incidents (Respondent brief at 5-6, 11-12, 20; I.J. at 5, 11, 17-18; Tr. at 42-43, 46, 74, 81). Therefore, the Immigration Judge's finding that the lead respondent had not provided a nexus between the harm suffered and a protected ground is not erroneous.

Furthermore, the respondents' experiences in Mexico did not rise to the level of persecution because persecution requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty. *Mikhailevitch v. INS*, 146 F.3d 384 (6th Cir. 1998); *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998) (considering incidents of harm that have occurred in the aggregate to determine if harm an alien suffered rises to the level of persecution). In this case, the Immigration Judge stated that persons sometimes came to meetings attended by the lead respondent and attempted to disrupt them by screaming opposition against the Green Party's goals or platform (Respondent brief at 3, 10; I.J. at 4, 9; Tr. at 38, 58-60, 73). The Immigration Judge also determined that the lead respondent received frequent threatening telephone calls telling him to leave his political party (Respondent brief at 3-4, 10; I.J. at 4-5, 7-9; Tr. at 39, 42, 78). In sum, the respondents failed to demonstrate that their experiences in Mexico rose to the level of persecution. *See Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

Next, the Immigration Judge properly found that the lead respondent has failed to show that more likely than not his life or freedom would be threatened upon return to Mexico. An alien may demonstrate that his or her life or freedom would be threatened in the future if he can establish that it is more likely than not that he would be persecuted on account of a protected ground. *See* 8 C.F.R. § 1208.16(b)(2). In this case, the lead respondent did not provide sufficient evidence that he would be singled out individually for persecution (Respondent brief at 9; I.J. at 7; Tr. at 50-51). *See* 8 C.F.R. § 1208.16(b)(2).

Moreover, the lead respondent has failed to establish that there is a pattern or practice of persecution of similarly situated persons in Mexico (I.J. at 19). *See* 8 C.F.R. § 1208.16(b)(2)(i). The Immigration Judge stated that the lead respondent is afraid to return to Mexico because upon their return from this country people would think he had a lot of money, he would be forced to return to the party and he would not know where to go (Respondent brief at 8-9; I.J. at 7; Tr. at 50). The Immigration Judge concluded that in spite of Mexico's widespread crime and corruption problems, there is insufficient evidence to suggest that the lead respondent is at any risk as a result of his past participation in the Mexican Green Ecological Party (Respondent brief at 9-10; I.J. at 19-20; Exh. 5; Tr. at 54).

Next, the lead respondent has not shown error in the Immigration Judge's finding that he failed to establish that he is unable to avail himself of protection from the government of Mexico (Respondent brief at 5, 12, 20, 22-23; NOA; I.J. at 18-19; Tr. at 77-78). For example, the lead respondent merely believes

that police did not investigate the March 1996 incident because he was not given a copy of a report (Respondent brief at 5, 12, 20; I.J. at 5, 8; 18; Tr. at 42, 63). The Immigration Judge further related that the lead respondent believes that the police need to be paid off in order to get results (Respondent brief at 5, 20; I.J. at 5; Tr. at 42). In addition, the lead respondent's wife did not report to the police an incident of harm pertaining to her children (Respondent brief at 11; Tr. at 80-81). Thus, the Immigration Judge did not err in finding that the lead respondent's fear that his life or freedom would be threatened was not objectively reasonable (I.J. at 2, 7, 17, 19-21).

Lastly, the Immigration Judge did not err in finding that the lead respondent did not meet his burden of showing that more likely than not he would be tortured by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity upon returning to Mexico (I.J. at 2, 20-21). *See* 8 C.F.R. § 1208.16(c), 1208.18(a); *see also Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008). The lead respondent's claims that there continues to be violence, corruption and lawlessness by the government in Mexico, are not substantial grounds for believing he would be in danger of being subjected to torture (I.J. at 20). Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

/s/ Anne J. Greer
FOR THE BOARD

APPENDIX C

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Cincinnati, Ohio

In the Matter of	)
	)
PABLO SANCHEZ-SANTIAGO, A 95 394 346,	)
MARIA CONSUELO BARERRA NAVA,	)
A 95 394 347,	)
FANNY PABLO BARERRA, A 72 415 044,	)
RENA PABLO BARERRA, A 72 415 045	)
JORGE PABLO BARERRA, A 72 415 046,	)
SANTIAGO PABLO BARERRA, A 72 415 047,	)
	)
Respondents	)
	)

IN REMOVAL PROCEEDINGS

Date: April 23, 2007

ON BEHALF OF RESPONDENTS:
Dennis E. Muchnicki, Esquire

ON BEHALF OF DHS:
Veronica Cromwell, Assistant Chief Counsel

CHARGE: Section 212(a)(6)(A)(in) of the Immigration and Nationality Act as amended.

APPLICATIONS: Asylum pursuant to INA 208(a);
withholding of removal pursuant to INA 241(b)(3);
withholding of removal under the UN Convention Against Torture.

ORAL DECISION AND ORDER
OF THE IMMIGRATION JUDGE

The lead respondent is an adult male, native and citizen of Mexico who was issued a Notice to Appear on July 27, 2005. The Notice to Appear charges that the respondent is removable under Section 212(a)(6)(A)(in) of the INA because he is present in the United States without being admitted or paroled. The other respondents are his wife and children and are derivatives on his claim.

The respondents admitted the factual allegations in the Notices to Appear and conceded removability at a Master Calendar hearing on September 8, 2006. See, INA Section 240(c)(1)(A). The Court finds that removability for all the respondents has been established by clear and convincing evidence. Mexico was designated as the country of removal. The issue before the Court concerns the respondents' applications for relief from removal. Specifically, asylum, withholding of removal pursuant to the INA, and withholding of removal under the UN Convention Against Torture. The hearing on this matter was conducted in Cincinnati, Ohio through video conference.

I will deny the respondents' applications for relief.

EVIDENCE AND TESTIMONY

The respondent bases his claim on an assertion that he was persecuted in Mexico on account of his political opinion (namely, his past affiliation with the Ecological Green Party or Green Party) and that he fears future persecution in Mexico on the same basis.

The following documents were marked and entered into evidence:

Exhibit 1: the Notice to Appear for the lead respondent, Exhibits 1A, 1B, 1C, 1D, and 1E, the Notice to Appear for the derivative respondents.

Exhibit 2: the I-589 or asylum application originally filed by the respondent in 2002.

Exhibit 3: an April 6, 2007 filing by the respondent with tabs A through Z and AA through QQ in support of the application (this exhibit includes the most recent State Department human rights report for Mexico).

Exhibit 4: a copy of a supplemental I-589 or asylum application of the respondent dated August 17, 2006.

Exhibit 5: a copy of a faxed article on the 1997 Mexico elections and a mention of the Green Party.

Exhibit 6: a copy of the assessment to refer from the asylum officer submitted by DHS for impeachment purposes.

The respondent testified at today's hearing in support of his claim. He testified on both direct and cross examination. In addition to the lead respondent,

the respondent's wife also testified at today's hearing. Finally, there was proffered testimony of two of the respondent's daughters. Essentially, it was a brief proffer as to what they would have testified to had they given their direct testimony during Court today. That proffered testimony was accepted by the Government and the Court.

In summary, the respondent testified that he was born in Mexico and came to the United States on April 2nd 1997. He testified that he lived well in Mexico and that he came to the United States because of "political problems." He said he started suffering harassments as a result of his activity in the Ecological Green Party in Mexico. He stated he was a candidate in the 33rd District for the Green Party in 1994. He stated that the Green Party had called for a "major change" in Mexico. He testified he felt the majority party, the PRI, also known as the Institutional Revolutionary Party in Mexico, which was the majority party at the time, was corrupt. He testified that the Green Party had weekly meetings and that people sometimes came to those meetings and attempted to disrupt them by screaming their opposition against the Green Party goals or platform. He testified that at the end of one of the Green Party meetings, they received threats and were told to "leave it all or else." He said one of the persons yelling the threats was a representative of another party. He testified that after the election in 1994, he started getting phone calls, as many as four or five a night, threatening him and telling him to leave the Green Party. He said that he was told to stop participating with that party or "things would not go well" for his family."

He testified he told one of the other representatives of the party about the calls. At first, he could not remember her name and could recall after some time that her first name was Marcella. He eventually remembered her last name and said it was R-U-B-A-L-C-A-B-A. He said he met this Marcella through his painting (the respondent is an accomplished artist). He said he told Marcella about the threats he had received and she told him that she had also received threatening calls. He testified he does not know where Marcella is now and that since he left the party and came to the United States some 10 years ago, he has not had any communication with her. He testified that he told Marcella he couldn't take the pressure and that she told him the same thing and they both thought it might be best to separate from the party. He testified that the voice on the threatening calls he received was hoarse, deep, and strident. He testified he could tell it was the same person who had yelled out at one of the party meetings previously. He testified that even after he left the party they continued to call and threaten him.

He testified that one day in March of 1996 a couple of years after the election and after he had left the party he went to the bank on business and was assaulted and beaten. He said he heard the voice of the assaulter say something along the lines of, "is that what you wanted, do you want more of this." The person also apparently, according to the respondent, said, "this is the first time, next time will be even better." The respondent claims he reported this to the police. He claims the police did not investigate the matter to his knowledge. He said that he believes that you need to pay off the police in Mexico in order to get any action. He testified that he recognized the voice of

this person at the bank as the same one he had heard during his party meetings or campaigning.

He testified he was involved in a second incident in 1996, this time in November. He said his face was covered and he was beaten, but he recognized the same voice again. He testified after this the threats by phone against him and his family continued. Again, he said it was a person with the same voice. He believes all the threats and the assaults that he suffered were related to his activity in the Green Party. He feels this must be so because he had no other enemies. He said as a result of this, he then made the hard decision to leave his family. He said that in April of 1997, some five months after the last incident, he came to the United States.

However, he testified that after he was in the United States, the threats against his family did not end. He says that one time his daughter was actually followed. He said his wife told him that people were watching the house and making her nervous. He said a man named Viatoro helped him prepare his original asylum application. He said this man pretended he was a lawyer, but was not. He said he was some kind of notario or notary. The respondent said that he did not tell the asylum officer at his interview in Chicago about the problems he experienced in Mexico and about which he testified to in Court today. He said he did not do so on the advice or instructions of the notario, Mr. Viatoro. He said Viatoro told him it was not necessary to do so.

The respondent testified he is an artist and a painter and that he has had much success in this country. He said he has had many exhibits of his

works around the state of Ohio. He testified he's afraid to return to Mexico. He said he is afraid because he and his family are already here in the United States and if they go back, they may do something worse to them than before. He said that he thinks the reason they would do something worse is because they would believe he is returning from the United States and bringing a lot of money with him. He also said that the political parties are still rooted there in Mexico. He said that they would say to him, "come with us, come back to the party," and that he would be at risk because of his history in Mexico. He said if he returned to Mexico, the situation would be complicated because he and his family have nothing left in that country and they would not know where to go now. He was asked if there was any specific threat to him should he return. He was a bit vague in his response, but he did say it would be a permanent condition or a continuing threat of some kind.

On cross examination, he confirmed that he stopped participating in the Green Party in September of 1994. He stated on cross examination that he believes the person who threatened and assaulted him was a leader in the PRI party. He believes that the person was an agitator who was trying to keep others from joining or adhering to the Green Party. He said that he did give some speeches on behalf of the Green Party himself, but the usual party spokesperson was Marcella. He said his name was sometimes in the newspaper identified as a representative of the Green Party. He testified that after the election in 1994, he received threats four to five times a week up until he left the county in 1997. He testified he does not know if Marcella ever told the president of the Green Party about the threats that he and she had received. He

testified this was because the president of the party was a busy man and he was hard to locate and hard to get in touch with. He confirmed he did have money with him when he was attacked at the bank in 1996. He said the persons who attacked him took part of the money, that much of it was hidden in his sock and they did not find it. He said he reported this incident to the police but in his view, they did nothing about it. He confirmed on cross examination that he arrived first in the United States in 1997 and his family came later in 1998. He testified on cross examination that the information or claim in his asylum application was to some extent invented by the notario who helped prepare it. He says he never reviewed that application. He was asked if he did not review the application why he didn't simply tell the asylum officer in Chicago the same story he told in Court today. He said that was because the notario told him not to say anything else. However, he confirmed that the notario was not with him at that asylum interview. He also confirmed that the asylum officer was not told the true or entire story during his interview. On redirect examination, he indicated that not only did the notario not read his initial asylum application to him, but he didn't really say much to the respondent about it at all.

The Court accepted proffered testimony that his two daughters would have testified on direct that they were followed on occasion in Mexico and that the man was a person who wore a red hat. The Government also accepted this proffered testimony.

The respondent's wife also testified at today's hearing. At the request of the respondent and his spouse, counsel for the respondent asked that the respondent's spouse be permitted to testify alone in the

courtroom without the presence of her family. Because the Government did not object to this, the Court accepted this arrangement and permitted the spouse of the lead respondent to testify in Court today with her husband and their children outside the courtroom. The spouse of the respondent, Ms. Maria BARERRA Nava, stated that her husband was threatened as he had claimed during his own cross examination. However, she also stated that she was not interested in nor did she follow her husband's political activity. She stated that she was really unaware of what really happened and when it happened with respect to things involving her husband. However, she stated she does know to her after her husband left for the United States. She testified that the threats did not stop against her family after her husband came to the United States. She said that there were strange and odd things going on. She said she got calls which made it clear that she and her family were being watched or followed. She said this made her scared and that she knew something was wrong. She testified that when she told her husband about the phone threats that they had received after he was in the United States, that he asked her about the sound of the voice of the person making the threats. She said she told him it was a hoarse, deep voice, a strident voice (again, the same general description provided by her husband of the voice of the person who he alleges had threatened and assaulted him). She testified that one time, there were people outside her house and she noticed the voice of one of the people and recognized it as the same person. She testified that it seemed like people outside her fence were trying to get over the fence and into the house, but they ultimately left. She testified that one night, quite later, she noticed someone was in the house. She said she locked the children in the back of

the house. She said that she was then attacked by a thin, strong person that she could not recognize. She said that she had been told in one of the threatening phone calls that she would receive a visit. She assumed that this was the unwelcome visit that was promised during one of those calls. She said that this person then raped her. Specifically, he forced sexual intercourse upon her. She testified she called the police without her children or husband knowing about this incident. However, she stated that the police mean nothing in Mexico and that they are corrupt. She said one of the police just lit a cigarette and laughed. She said after this incident, she took the children out of school and eventually came to the United States. She testified she has never even told her husband about this incident. She asked the Court for pity and compassion for herself and her children.

On cross examination, she testified she's not sure how long this rape occurred prior to her coming to the United States. She testified that her attacker said only, "you see, you see," and nothing else. She concluded from this that the attack was related to the threatening phone calls she had previously received.

That is a general summary of the testimony at today's hearing.

The Department of Homeland Security opposes the respondents' applications for relief.

STATEMENT OF THE LAW

Burden of proof, credibility, and corroboration

The respondent has the burden of proof on the applications for relief.

In meeting his burden, the respondent's credibility is very important and may be determinative. While it may be possible to grant an application solely on the basis of a respondent's testimony, to do so, that testimony should be believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of his fear. Matter of Dass, 20 I&N Dec. 120 (BIA 1989). Testimony is not considered credible when it is inconsistent, contradictory with current country conditions, or inherently improbable. Matter of S-M-J-, 21 I&N Dec. 722 (BIA 1997). Any material discrepancies or omissions should be explained satisfactorily by the respondent. Generally, corroborating evidence should be presented where it is reasonably available. Matter of Dass, supra. A respondent who does not offer such reasonably available corroborative evidence should explain the failure to do so. Matter of S-M-J-, supra.

Asylum

To be eligible for asylum, the respondent must show that he is a "refugee" within the meaning of the Immigration and Nationality Act. INA Section 101(a)(42)(A). To do so, he must demonstrate that he is unable or unwilling to return to Mexico because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Matter of

Acosta, 19 I&N Dec. 211 (BIA 1985), modified on other grounds, Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. INS v. Cardoza-Fonseca, 480 U.S. 241 (1987).

Persecution within the meaning of the Immigration and Nationality Act does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional. Matter of V-T-S-, 21 I&N Dec. 792 (BIA 1997). To qualify for asylum, the harm suffered or feared by the applicant must be at the hands of the government or an agent that his government is unwilling or unable to control. See, Matter of F-A-, 22 I&N Dec. 1328 at 1335 (BIA 2000).

If the respondent establishes past persecution, there is a regulatory presumption that he has a well-founded fear of future persecution on the same basis. 8 CFR 1208.13(b)(1).

In the absence of past persecution, the respondent must demonstrate a well-founded fear of future persecution. 8 CFR 1208.13(b)(2)(in).

Withholding of removal

To qualify for withholding of removal, the respondent must show that his life or freedom would be threatened in the other country on account because of a protected ground. INA Section 241(b)(3). That is, the respondent must show a "clear probability" of persecution on one of the enumerated grounds. INS v. Stevic, 467 U.S. 407 at 413 (1984). To meet that standard, the respondent must show that it is "more likely than not" that he will be persecuted in the other

country on one of those grounds. See, Matter of Mogharrabi, supra. This is a higher standard than for asylum. As with asylum, if the respondent demonstrates past persecution, he benefits from a rebuttable presumption of future persecution. 8 CFR 1208.16(b)(1).

Relief under the Convention Against Torture

To be eligible for withholding of removal under the Convention Against Torture, the respondent must show that it is more likely than not that he will be subject to torture in the other country "by or at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity." See, 8 CFR 1208.18(a)(1). Unlike asylum, which requires a showing of nexus, for CAT protection, the respondent need not establish that the torture is on account of any particular ground. See, Matter of S-V-, 22 I&N Dec. 1306 (BIA 2000).

FINDINGS AND ANALYSIS

The Court has considered all of the testimony and documentary evidence presented in this case.

I will first address the credibility of the respondent. I have had the opportunity to listen to his testimony and to observe his demeanor. I find him not to be a credible witness.

The reason I find him not credible is that his 2006 asylum application and testimony today were completely new in essential ways and very different than the claim he made in his initial 2002 asylum application. Today, he claims he was threatened,

assaulted, and beaten because of his activity in the Ecological Green Party of Mexico. Yet, in his original asylum application, his claim was different. He said he was mugged and robbed after the sale of one of his stores by armed thugs. He says he was beaten up and that they followed him home. He said that he received threats after that. He said that then during a meeting with product distributors of his business, men with guns broke in. He said two people were killed. He said he himself and others were threatened. He said he then sold his business and came to the United States. He said his wife and family were then threatened after he was here in the United States. So, they eventually sold their home and came to the United States as well. That is what he stated in his original asylum application filed in 2002. Whether or not he was assisted by an unscrupulous notario in preparing his original asylum claim, he is the only one that signed that claim and he is responsible for its contents. As indicated, it is quite different than his supplemental asylum application and his testimony today. Today, his claim, which is uncorroborated other than through a document showing that he did in fact run for office on behalf of Green Party in Mexico, was based on a new claim that he suffered persecution on account of that Green Party activity. This new claim has come quite late. It came after the asylum officer refused to grant his application in 2005 and referred it to the Court. It is in essence different not only from his initial claim, but from what he told the asylum officer during his interview.

I also have significant concerns about the credibility of the lead respondent's wife. She testified today and we heard in Court today for the very first time about something that was not mentioned

previously in her husband's original or supplemental asylum applications or during his testimony. Namely, we heard from the respondent's wife today that she was raped in Mexico after her husband had come to the United States. Apparently, she has not even disclosed this information to her husband. While I fully understand and appreciate a person's reluctance to discuss such a horrible and degrading act, something this potentially important to a claim for asylum should have been disclosed before Court today if it truly happened.

An applicant for asylum must show by clear and convincing evidence that the application was filed within one year of his last arrival in the United States. INA Section 208(a)(2)(B). The respondent can be excused from this requirement only if he demonstrates materially changed circumstances effecting eligibility for asylum or extraordinary circumstances directly related to the delay in filing. INA Section 208(a)(2)(D); 8 CFR 1208.4(a)(4) and (a)(5). The respondent must file within a reasonable period of the changed circumstances or extraordinary circumstances.

The respondent has not met his burden of proof on this issue. He entered the United States in April of 1997. He did not file his original asylum application until January of 2002, almost five years later. He said in his original 2002 asylum application that the reason he was filing late was because he didn't know how to file and because he was afraid when he first came to the United States. Today in Court, he testified that he had nobody to help him when he first came to the United States and he didn't speak English and only later was advised to seek help, and after that, he filed for asylum. While this is perfectly understandable to

the Court, it is not an acceptable reason for late filing. He has not shown changed or extraordinary circumstances under the law. Consequently, his asylum application is statutorily barred for late filing.

Based on the totality of testimony and evidence presented in this case, I also find that the respondent has not met his burden of proof that he has suffered past persecution in Mexico on account of any protected ground. Even if the respondent's testimony had been credible, and even if the alleged assaults and beatings and threats that he says he received rose to the level of persecution (either alone or in the aggregate), therey have not been shown to be "on account of" a protected ground. The necessary "nexus" requirement has not been met. Any such conclusion would be too speculative. The only specific references to the Green Party were in the alleged 1994 threats, near the time the respondent ran for election. The alleged assaults and additional threats in 1996 afterward made no reference to his former participation in the Green Party. The respondent left the Green Party in 1994. While he says he believes he recognized the voice in 1996 as the same person who spoke out against him and the Green Party at a meeting in 1994 and threatened him in 1994, that is not sufficient in the view of the Court. And, even if it was the same person, when he assaulted and threatened the respondent in 1996, he made no specific references to the Green Party. Moreover, even if the rape of the respondent's wife took place just as she claimed it did, there is insufficient evidence to conclude that it was "on account of" her husband's political activity or any political opinion imputed to her. All the alleged attacker said, according to the victim, was, "you see, you see." He said nothing else. And, she concluded that

it had to do with the threatening phone calls as a result of that. But, again, there really is insufficient evidence to conclude that even if it was connected to the threatening phone calls (which is quite speculative) that the threatening calls were made on account of the respondent's political opinion or a political opinion imputed to him. It is too big an inferential leap to so conclude.

Nor has the respondent shown that the alleged problems he experienced in Mexico were done to him by a representative ~~by~~of the PRI party in an effort to try to suppress the growing Green Party or that such a person was either a representative of the government of Mexico or a person the government of Mexico was unwilling or unable to control. That too is too speculative. The respondent claims that he reported the 1996 assault and the 1996 robbery to the police. There is no independent proof of that. However, even if he did report these incidents, the fact that the matters were not solved is not sufficient to show that the government of Mexico is unwilling or unable to control those responsible. The lack of success in solving or stopping a crime does not translate, without more, into government unwillingness or inability to stop persecution for asylum purposes. While according to the respondent the Mexican police did not take action to his knowledge, there is not enough evidence to suggest that they turned a total blind eye to the events. aAnd despite widespread problems with corruption and criminality in Mexico (there is much record evidence on this issue), there is still a functioning criminal justice system in that country.

In the absence of past persecution, to be eligible for asylum, the respondent must demonstrate a well-

founded fear of future persecution should he return to Mexico. In a case such as this when asylum is statutorily barred for late filing reasons, the respondent must show that it is more likely than not that he will be persecuted in order to obtain withholding of removal. Based upon a totality of the evidence, I find that the respondent has not met his burden of proof on this issue. The respondent has no even well-founded fear of persecution on account of a protected ground, much less a "more likely than not" not chance of persecution. There is insufficient evidence to suggest that he'll be at any risk today as a result of his past participation in the Green Party in Mexico over a decade ago. As noted, there is significant record evidence to suggest that Mexico has a widespread crime and corruption problem, but that is not sufficient to demonstrate that this respondent or persons similarly situated to him would face a more likely than not chance of persecution on account of political opinion. There is no record evidence showing a person who was a candidate in 1994 for the Green Party and who then left that party in 1996 and has been in the United States for 10 years afer that would face any objectively reasonable risk of persecution himself, and there is nothing in the record evidence showing that past or present members of the Green Party face any reasonable risk of persecution. Certainly there is no evidence to show that such risk of persecution for membership in the Green Party or activity on behalf of the Green Party would be "more likely than not." The Green Party is apparently a growing and legitimate party in Mexico today.

As indicated, respondent is statutorily barred for asylum for late filing reasons. He's also failed to meet

his burden of proof with respect to withholding of removal under INA Section 241(b)(3).

Turning last to his claim for protection under the Convention Against Torture, I note the following. He has also failed to meet his burden of proof for this form of relief. Although there is no nexus requirement for CAT protection, the respondent must show that it is more likely than not that he would be tortured if he returned to Mexico. He has not done so. There is nothing in the record evidence to suggest that he would be tortured for any reason or for no reason whatsoever. While rape can constitute torture, as indicated, I found the respondent's wife not credible with respect to her claim of past rape. Even if she had been raped, however, it was not at all clear that it took place by or at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity. Moreover, there is nothing to suggest that the respondent or his family, including his wife, faces any reasonable chance of torture from anyone whatsoever should they return to Mexico to day. Thus, I must and will deny the application for CAT protection as well.

The lead respondent appeared to be a gifted artist who has contributed greatly to the community in Ohio. He and his family have widespread support from many people in the community. Sadly, he is not entitled to asylum or withholding of removal under U.S. law.

ORDERS OF THE COURT

Accordingly, the following orders are entered:

The lead respondent and all of the derivative respondents' applications for asylum are denied.

The lead respondent and all of the derivative respondents' applications for withholding of removal pursuant to the INA are denied.

The lead respondent and all the derivative respondents' applications for withholding of removal pursuant to the Convention Against Torture are denied.

All the respondents shall be removed from the United States to Mexico on the charges contained in the Notice to Appear.

/s/ T Show
THOMAS G. SNOW
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before THOMAS G. SNOW in the matter of:

PABLO SANCHEZ-SANTIAGO
A 95 394 346

MARIA CONSUELO BARERRA NAVA
A 95 394 347

FANNY PABLO BARERRA
A 72 415 044

RENA PABLO BARERRA
A 72 415 045

JORGE PABLO BARERRA
A 72 415 046

SANTIAGO PABLO BARERRA
A 72 415 047

Cincinnati, Ohio

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ Alesia M. Brown
Alesia M. Brown (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

November 11, 2007
(Completion Date)

IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

In the Matter of

Case No.: A95-394-346

PABLO SANCHEZ, SANTIAGO
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on April 23, 2007. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[✓] The respondent was ordered removed from the United States to Mexico or in the alternative to .

* * *

[✓] Respondent's application for asylum was ( ) granted (✓) denied ( ) withdrawn.

[✓] Respodent's application for withholding of removal was ( ) granted (✓) denied ( ) withdrawn.

* * *

[✓] Other: CAT denied .

Date:
Appeal: Waived/Reserved Appeal Due By:

by R 5/23/07

/s/ T Snow
~~LAURA A. BAXT~~ER T. SNOW
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer
[ ] ALIEN'S ATT/REP [ ] INS

DATE: 4/23/07 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28
[ ] Legal Services List [ ] Other

Q6

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 09-3301

[Filed June 16, 2010]

SANTIAGO PABLO-SANCHEZ, ET AL.,	)
	)
Petitioners,	)
	)
v.	)
	)
ERIC H. HOLDER, JR., ATTORNEY GENERAL,	)
	)
Respondent.	)
	)

ORDER

BEFORE: GIBBONS, SUTTON, and WHITE, Circuit Judges.

The court having received a petition for rehearing en banc, which was circulated to all active judges of this court, none of whom requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the

petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

APPENDIX E

U.S. Department of Justice
Executive Office for Immigration Review
Immigration Court

A 95 394 346

A 95 394 347

A 72 415 044

A 72 415 045

A 72 415 046

A 72 415 047

PABLO SANCHEZ-SANTIAGO	)
MARIA CONSUELO BARERRA NAVA	)
FANNY PABLO BARERRA	)
RENA PABLO BARERRA	)
JORGE PABLO BARERRA	)
SANTIAGO PABLO BARERRA	)
	)
Respondents	)
	)

IN REMOVAL PROCEEDINGS

Transcript of Hearing

Before THOMAS G. SNOW, Immigration Judge

Date: April 23, 2007 Place: Cincinnati, Ohio

Transcribed by DEPOSITION SERVICES, INC. at Rockville, Maryland

Official Interpreter: Deidre Fitzpatrick

Language: Spanish

Appearances:

For the Department of Homeland Security:

Veronica Cromwell, Esquire

For the Respondent:

Dennis Muchnicki, Esquire

* * *

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JUDGE FOR THE RECORD

This is a removal proceeding being conducted in Cincinnati, Ohio via televideo on April 23rd 2007 in the matters of Santiago Pablo Sanchez, A number 95 394 346, Maria Consuelo Barerra Nava, A number 95 394 347, Fanny Pablo Barerra, A number 72 415 044, Rena Pablo Barerra, A number is 72 415 045, Jorge Pablo Sanchez, A number 72 415 046, and Santiago Pablo Barerra, A number 72 415 047. The Immigration Judge is Thomas Snow. I'm here in Arlington, Virginia

with the interpreter. However, the hearing is being conducted in Cincinnati. That's where the respondents and their counsel and Assistant Chief Counsel are all located.

JUDGE TO COUNSEL

Q. May I ask counsel for each party to enter their appearances?

A. (Ms. Cromwell) Veronica Cromwell for the Government.

A. (Mr. Muchnicki) Dennis Muchnicki for the respondents.

Q. Thank you both.

A. (Mr. Muchnicki) Respondents, plural.

Q. Thank you.

JUDGE TO MR. SANCHEZ-SANTIAGO

Q. And to the lead respondent, sir, good morning. Would you state your -- oh, I'm gonna go to the interpreter first.

JUDGE TO INTERPRETER

[p.27]

Q. And to our interpreter today, ma'am, would you state your name for the record?

A. Deidre Fitzpatrick.

Q. Thank you, Miss Fitzpatrick. If you would raise your right hand, I'll put you under oath. Do you solemnly swear or affirm that you'll interpret from the English to the Spanish and the Spanish to the English languages to the best of your knowledge and ability?

A. I do.

Q. Thank you.

JUDGE TO MR. SANCHEZ-SANTIAGO

Q. And now, through the interpreter to the lead respondent, good morning to you, sir. Would you state your name please?

A. Santiago Pablo Sanchez.

Q. Thank you very much, sir.

A. You're welcome.

Q. Okay. Okay.

JUDGE FOR THE RECORD

And I note for the record that the other five respondents, the wife and the children of the lead respondent are all present in Court today. Now, before we get to the testimony of the lead respondent, I'd like to go over the documents, make sure I have everything.

MS. CROMWELL TO JUDGE

[p.28]

Q. Your Honor, I'm sorry. Before we start, I think there was a mix up on the A number of the lead respondent 'cause I show '047 as the child. He's 11 years old.

A. Right. I --

Q. Santiago Pablo Barerra.

A. When you say mix up, do you mean on the cover of the submission or somewhere else?

Q. Well, I thought I heard you say 72 415 047. But he's actually 95 394 346.

A. Right. That's what I said for the lead respondent.

Q. Oh, is it?

A. Yeah.

Q. Oh, I'm sorry. I didn't hear you.

A. That's all right. I do note that the '047 number was listed, I think, inadvertently next to the lead respondent on the cover of the primary submission in support of the application, but I think you're right, Ms. Cromwell. That '047 is actually the derivative respondent, one of the children of the respondent.

MR. MUCHNICKI TO JUDGE

Q. That's correct, Your Honor.

A. Okay. All right.

JUDGE FOR THE RECORD

Now, Exhibit 1 will be the Notice to Appear for the lead respondent, Mr. Santiago Pablo Sanchez, number ending in

[p.29]

'346. That'll be Exhibit 1 and come into evidence as Exhibit 1. Exhibit 1A will be the Notice to Appear for Maria Consuelo Barerra Nava, A number ending in '347. That'll be Exhibit 1A and come into evidence as 1A. Exhibit 1B will be the Notice to Appear for Fanny Pablo Barerra, A number ending in '044. That's Exhibit 1B. Exhibit 1C will be the NTA for Rena Pablo Barerra. Exhibit 1D will be the NTA for Jorge Pablo Barerra. And Exhibit 1E will be the NTA for Santiago Pablo Barerra, ending in '047. Then Exhibit 2 will be the I-589 or asylum application of the lead respondent and will come into evidence as Exhibit 2. And Exhibit 3 will be the submission by Mr. Muchnicki on behalf of the respondent from April 6th 2007 containing tabs A through Z and AA to QQ, and that also includes the most recent State Department human rights report for Mexico.

JUDGE TO MS. CROMWELL

Q. Miss Cromwell, any objections to any portions of that exhibit?

A. Yes. To the (indiscernible) that weren't translated. Behind tab A there is a card. It looks like a driver's license and an election card, I'm not sure.

But they're not translated. And page 26, 26 is not translated.

Q. Page 26, if I'm reading it right, it looks like the English is on the right and the Spanish is on the left.

A. Is it?

MR. MUCHNICKI TO JUDGE

[p.30]

Q. Yes.

MS. CROMWELL TO JUDGE

Q. Okay. Oh, yeah. I'm sorry. I didn't see that. And I haven't seen the originals.

A. Okay. Now, I understand we don't have the originals available today.

JUDGE TO MR. MUCHNICKI

Q. Is that right, Mr. Muchnicki?

A. That's correct.

Q. Okay. I'm gonna admit the copies. I think the Government has requested originals and I think they're entitled to those, but I'll go ahead and admit the copies, except for the cards which are in Spanish and are not translated. I think they're not in compliance with the reg requiring a certified English translation. So, I do not think it would be appropriate to admit those. But everything else will come into

evidence. I'll give it all appropriate weight. So, that'll be Exhibit 3. And, I believe that's all I have in the way of documents at this point. Is that correct?

A. Your Honor, Exhibit 2, is that the administrative I-589 or the - -

Q. It's the only one I have, which the only one I have which is date stamped received by CIS January 30, 2002.

A. Oh, okay. 'Cause I have one August 14, '06, but it's 047 on the cover sheet (indiscernible).

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MR. MUCHNICKI TO JUDGE

Q. Yeah. At the last Master Calendar, yeah, that was -- you had it, Your Honor, but that's where we correct -- we made the correction to the alien number. That's the amended 589 that I filed and that's what we -- at that last Master Calendar that's where we came. We corrected the alien number.

A. Okay. Let me see if I can find that.

Q. So, we did -- you've got it somewhere 'cause that's, that is the application we were having the hearing on and you had it back at the Master.

A. Okay. Well, the application, the original application is the one from 2002. You're obviously welcome and you did, I agree, and I do have it, supplement the application, and you're free obviously to add additional things to that. That can become an

issue, obviously, but it's certainly something you can do and it does provide -- it does contain the more detailed statement, and I do have it, and I failed to mention it. So, let me mark that as a separate exhibit. That'll be Exhibit 4. Thank you both, counsel, for pointing it out to me. It was received August 17th 2006. It was date-stamped in on that date. And it is a supplemental or new I-589.

MR. MUCHNICKI TO MS. CROMWELL

Q. The prints are current.

A. (Indiscernible).

Q. No. The prints are current.

[p.32]

A. But the 14 year old needs to be printed (indiscernible).

JUDGE TO COUNSEL

Q. Okay. Anything else before we get started?

A. (Ms. Cromwell) Regarding the background checks, Your Honor, for '346, there was a hit on the prints and I don't have a rap sheet for that one.

Q. '346?

A. Right.

Q. That's the lead respondent.

A. And --

JUDGE TO MR. MUCHNICKI

Q. Do you know anything about that, Mr. Muchnicki?

A. I think it's a disorderly conduct. I'm not certain. I didn't represent.

Q. Okay.

JUDGE TO MS. CROMWELL

Q. Anything else, Miss Cromwell?

A. And '346 needs to be printed. They're 14 years old.

MR. MUCHNICKI TO MS. CROMWELL

Q. Which one?

A. '346.

Q. '346 is the lead, isn't it?

A. No. No. I'm sorry. '046.

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Q. '0. Oh, the 14 year old.

A. Jorge.

JUDGE TO MS. CROMWELL

Q. Okay. Well, why don't we do this. Let's, let's proceed, and we'll see where we are at the dnd of the hearing. Obviously, I can't grant relief for a person that's within the required printing age without current and clear prints and biometrics. But, my practice, as you both know, is to hear a case, and then at the end, if relief is in order, we put it off. If it's not in order, the I go ahead and decide the case on the day of the hearing. So, let's hear the case and see where we are at the end. We'll also determine at the end whether there's a need for more information on this criminal hit and more --

JUDGE TO MR. MUCHNICKI

Q. I take your proffer that you believe it to be a disorderly conduct, Mr. Muchnicki, but we'll determine whether we need to hear more about that at the end of the hearing.

A. Okay. And I'm sorry about Jorge. We just missed the age change. We had everybody else got their prints, but we missed Jorge.

Q. No, I understand. The age, he just got into the age where prints are necessary. So, I understand. Okay. Let's begin with the testimony.

JUDGE TO MR. SANCHEZ-SANTIAGO

Q. And I'd ask the respondent to please stand and

[p.34]

raise his right hand so I can put him under oath. Sir, do you solemnly swear or affirm that you'll tell the

truth, the whole truth, and nothing but the truth here in Court today?

A. Yes.

Q. Thank you, sir. You may sit down.

JUDGE TO MR. MUCHNICKI

Q. And, Mr. Muchnicki, you may examine.

A. One other thing that knowing my diligent colleague will probably come up, I don't know how, how you want -- 'cause there will involve something, it will involve something that my client doesn't have knowledge of, but the person who prepared, and you tell me how you wanna handle it. The person who prepared the original application, as I recall, he is one of the more infamous notarios and I believe, I'd have to check, but my office initiated a disciplinary complaint against him and another one of the notarios who is advertising and I believe the Ohio State Bar Association has obtained injunctive relief barring both Mr. Viatoro and the other guy from unauthorized practice of law in Ohio because of their -- what they have done immigrant clients, filing out applications that should have been done by lawyers. Mr. Santiago doesn't know anything about that. That was something that my office personally took the initiative to do based upon the frequency of which certain notarios have shown up preparing immigration documents that have significant problems.

Q. Okay. Well, right now, the originally filed 1-589

[p.35]

I have by the respondent. It was just signed by him and nobody else. So, I'm not aware. That maybe could come out in testimony from the respondent, but I'm not aware of anybody else being involved or who, I should say, who was involved other than himself in filling it out.

A. Oh, I know Viatoro was 'cause he's one of the clients who I know have gone to Viatoro, but he signed -- that was Mr. Viatoro's practice, never leave his fingerprint, preparing stuff, having people file it, and then, you know, well, any -- I just wanted to bring that to the Court's attention. Obviously, it's a question -- I'm sure Miss Cromwell is gonna ask who helped him prepare it.

Q. Okay. Well, you can bring that up.

A. (Indiscernible).

Q. Okay. That's fine.

A. Okay.

MR. MUCHNICKI TO MR. SANCHEZ-SANTIAGO

Q. Mr. Pablo, would you please state your name?

A. Santiago Pablo Sanchez.

Q. And, where do you currently reside?

A. In Columbus, Ohio.

Q. Where were you born?

A. In Oaxaca, Mexico.

Q. And when did you come to the United States?

A. In April of 1997.

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Q. Was there any particular reason why you came to the United States in April of '97?

A. Yes.

Q. Okay. Could you explain to us what happened in Mexico that lead to your coming to the United States?

A. Well, when I was in Mexico, I lived well economically. I was, I was doing well. And, the reason is that I actually came to the States is because I had political problems. I was involved with a political party and from there, I started suffering harassment which led me to have to come here.

Q. Okay. Which political party were you involved with?

A. The Ecological Green Party.

Q. And what was your involvement with the Green Party?

A. I was, I was placed as a candidate as a federal deputy for the 33rd district.

Q. Okay. And, what year were those elections?

A. '94.

Q. And, as a candidate for the district 33, what, what was involved with doing that, with campaigning for that office?

A. Well, we had to prepare ourselves a lot and formulate a campaign that would invite people to make an effective change.

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Q. And what was, specifically, what was the Green Party advocating when you were running for office?

A. Well, what we want, what we called for was a major change because the other party, the majority party was a corrupt one and we wanted to carry out a major change.

Q. What kind of changes were you advocating from what the party -- well, first of all, what was the party in power?

A. PRI.

Q. And, what was the kind of changes --

MS. CROMWELL TO JUDGE

Q. I'm sorry, Your Honor. I didn't hear the name of the party.

A. Okay.

JUDGE TO MR. SANCHEZ-SANTIAGO

Q. PRI, the PRI party stands for what, sir?

A. Institutional Revolutionary Party.

MR. MUCHNICKI TO MR. SANCHEZ SANTIAGO

Q. And what were the kind of changes that the Green Party wanted to make that were different from the PRI?

A. Well, we wanted to -- one of our characteristics was first to avoid contamination. The PRI party had also that pretext, but they would do it under the guises of revising cars to avoid contamination and the only thing that this was accomplishing was to spend people's money.

Q. What happened? As you went about campaigning, what

[p.38]

happened?

A. Well, we had meetings, weekly meetings. Most of the people were very willing to participate in these meetings, but there were groups that would come with the only finality protesting.

Q. Okay. And, tell me about the protesting. What do you mean?

A. Well, well, we were campaigning, the people while we were talking, would stand. They wouldn't face us, but they would start screaming that what we proposed was wrong ideal and they would be

threatening shouts from them, and what we were proposing was not good for the nation.

Q. Now, drawing your attention to about a month before the election. Did something else -- can you tell me whether or not there was any additional negative feedback that you received at that time?

A. Well, at the end of one of our meetings, we received threats, and there was a voice that stood up and said you better leave this all, let it all be either or else. There was one person in particular, and I looked over to see who it was and I noticed it was a representative from another party.

Q. And then what happened?

A. Well, after the elections, I started getting phone calls. First place, after the elections, we were never given the exact results of those elections, but they hid the results in

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fact. I started receiving phone calls, maybe four to five calls a night, threatening me and telling me to leave that party.

Q. Can you give me any more specifics about what they were telling you?

A. Yeah, well, they would tell me to stop participating with this party or things would not go well for my family.

Q. Did you discuss these phone calls, these threatening phone calls you were receiving with anyone else?

A. Yes, well, once I was speaking with one of the representatives of the party and I told her of my phone calls.

Q. What was that representative's name?

A. Her name was -- what was the name?

Q. Do you remember her first name?

A. Yeah, but I can't think of it right now. Marcella.

Q. And where did you meet with Marcella at?

A. Well, I met her, let's see. I always painted and she asked me to participate with them.

Q. Well, when you had your discussion about the threats, where were you meeting her at?

A. Well, usually, we would meet there. There was a lounge. I just remembered her name. Her name is Marcella Rubalcaba.

JUDGE TO MR. SANCHEZ-SANTIAGO

Q. Could you spell that? Could you spell that?

[p.40]

A. R-U-B-A-L-C-A-B-A.

Q. Again please.

A. R-U-B-A-L-C-A-B-A.

Q. Okay. Thank you.

MR. MUCHNICKI TO MR. SANCHEZ-SANTIAGO

Q. Well, when you talked with -- when you met with her to discuss the phone calls, what did she say?

A. Well, she said that she'd also received calls with the same message. She said she'd gotten calls, too.

Q. Other than your membership in the Green Party, did you and, I'm gonna call her Marcella, did you two have any other common interests?

A. No. Only from with relevance to the party.

Q. Do you have any idea where this Marcella is today?

A. No. Actually, ever since we left the party, ever since I left the party and I came here, I've had no communication with her.

Q. Now, I'm gonna ask you to look at Exhibit H attached to the -- which is part of Exhibit 3, our (indiscernible) exhibit, can you tell me what that is and where you got it?

A. This was given to me after the campaign, it was given to me in recognition after the campaign.

Q. Now, okay, so you were having this -- did you --

were you having these conversations with Marcella after the

[p.41]

election, before the election? When?

A. Well, these conversations were maybe just shortly before and also after.

Q. Now, what did you guys discuss in your last meeting with her? How did you leave it?

A. Well, she said -- I said that I couldn't continue with this activity. I couldn't take all the pressure. She said that she was also thinking the same thing because the constant continuous calls and harassment, and we were thinking that maybe it was better that we just split apart or separate.

Q. Was there -- tell me, in terms of the person who was making these calls to you during this period right before and after the election, was there anything that you recognized about the person's voice?

A. Well, he had a manner. His voice was at the same time hoarse and deep voice and strident, and I could tell immediately it was him.

Q. When you say it was him, meaning who?

A. The one who was yelling before.

Q. You mean at that election stop that you were at? What do you mean before?

A. Yeah, before, when we had the meetings. I could hear that voice.

Q. When you refer to the meetings, are you referring to the campaign rallies?

[p.42]

A. Exactly.

Q. All right. So, anyway, after you and Marcella decided to split from the party, did that solve all of your worries about threats to your family and you?

A. No, because after they, they kept on calling me. I guess they didn't see that I was no longer [illegible] of the party, and they continued calling me and th[illegible]atening me.

Q. Well, in particular, was there, was there a particular incident that caused you to become particularly scared?

A. Yes, well, in particularly, there was once. You see, I had some business and I went to the bank, and when I went to the bank, I was assaulted and I was grabbed. My face was covered. I was beaten, and I could hear a voice saying is that what you wanted, huh, is that what you were asking for, you want more of this.

Q. Do you remember when that was?

A. It was in March, in the month of March.

Q. What year?

A. '96.

Q. Now, did you report that to the police?

A. Yes, I informed the police.

Q. Did they do anything about it?

A. No, unfortunately, no. You see, in Mexico, unless you pay 'em off, they won't investigate anything.

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Q. Now, how did this incident relate to when you started getting calls again?

A. How is it related?

Q. Yes.

A. yeah, well, the person that I referred to when, when I was attacked, were -- the boy said this is the first time. The second time will be even better.

Q. Was there anything about that voice? Was there anything distinctive, unique about the voice?

A. Yes. It was a very deep or hoarse voice, and at the same time, a very strident voice, a very menacing voice.

A. Did you recognize that particular voice?

A. Yeah, because I would hear it during my campaigning. I recognized it, and when I was assaulted, I could recognize it was the same voice.

Q. Now, was -- in 1996, was there a second incident where you were attacked?

A. Yes, well, there was another incident. Again, they -- I was taken. They covered my face. I was beaten and I heard exactly the same voice. There was there or four people. I didn't see them exactly, but I did notice the particular voice.

Q. And when was that second incident?

A. November. Yup. It was November.

Q. What year?

A. Same year, '96.

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Q. And, what about the phone calls? Did they continue or did they stop? What happened with the phone calls?

A. Well, unfortunately, they continued. At this point, they were threatening me and my family.

Q. And what voice? Did you recognize the voice on the phone that was making the threats after that second attack?

A. Yeah. Definitely. There was no doubt about it at this point in my mind. This was all something planned and it was definitely the same voice.

Q. Why do you relate all of this to your -- do you -- well, first off, do you relate all of these threats and actions against you to your involvement with the Green Party?

A. Yes, definitely, because when I was working full time with the party, there would always be groups who would come and protest whatever we were up to.

Q. Was there any other -- were you involved in any other groups or organizations that would of -- other than the Green Party that would have attracted attention to you?

A. I didn't understand the question.

Q. Were you involved with any other -- besides the Green Party, were you involved with any other organizations or involved in any other activities that would have provoked people to threaten or attack you?

A. No. No. No other. I had no other enemies. I was only attacked by this particular group. I have no other enemies

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at all.

Q. So, Mexican -- you are an artist. Correct?

A. Yes.

Q. Mexican, Mexican art critics don't resort to threatening phone calls or assault on (indiscernible)?

A. No because if one sticks to art exclusively, there's no problems. Problems come when you start getting politically involved.

Q. So, anyway, after the attack in November of 1996 and they continuing threats, what did you decide to do?

A. Well, it was a hard decision. I had to leave my family. I told them I'm leaving 'cause they wanna hurt me. Well, 'cause I didn't know what to do. Wherever I go, they find me and that's when I decided to leave the country.

Q. Are you okay to continue?

A. Yeah.

Q. Okay. So, when did you then leave, leave -- when did you then leave Mexico for the United States?

A. I left in April of '97.

Q. What caused the -- why was there the gap of five months between the time of the last attack and when you actually left Mexico?

A. I took as much as I could with my family.

Q. After you left, did the calls to your family stop?

A. No.

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Q. What happened?

A. Well, when I came, I would be in constant communication with my wife and I'd say, okay, so, how are things 'cause I wanna come back and she would say no, don't come back because now they're against us.

Q. What did she mean by that?

A. Well, the implication was that if I returned, something else would happen and it could be something worse.

Q. Well, when she said they were against us, which I assume meant the rest of your family, what was she referring to?

A. Well, she would call me, we would talk, and she would call me crying, and she would say that she received threatening calls and that they would say to her they know, we know how you're dressed, we know what you're doing, we're going to go to your house and come after you.

Q. Did your wife tell you about anything specific involving your children?

A. Yeah, well, she said that once my daughter came crying back from school. My daughter would come back crying from school. Once she came back running into the house saying that they -- she was being followed.

Q. Did you wife or did she not tell you about people actually approaching the house?

A. Yeah, well, she -- we were always keep talking and she would say that things were becoming ever more frequent, that

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she would see people watching. They would come by, close by to the house, and it was making her nervous.

Q. Who, who helped you prepare your original asylum application?

A. A man whose name is Viatoro.

Q. And, if -- does he have a particular title? Does he have a particular title?

A. I don't think so. He would, he would pretend he was a lawyer, but then I heard he wasn't much of anything.

Q. Was he a notario?

A. Notario, he would say. I found out later he was a notary.

Q. And, do notarios have a particular status in Mexico that they don't have in the United States?

A. I don't understand.

Q. Do notarios in Mexico have a legal status that is, that, that is different than in the United States?

A. Yes, well, they have legal status in what they do and that's why I talked to him.

Q. Did you discuss your political problems with the asylum officer when you had your interview in Chicago?

A. No.

Q. Why not?

A. No because he says don't you go into, you don't have to say anything else when you have your interview. Yeah, but

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I would answer, but I had situations. I had experiences, no, no, no, don't worry. You don't have to say anything else, is what he answered.

Q. He, meaning who? The asylum officer or Mr. Viatoro?

A. Yeah, I'm referring to Viatoro. He said don't say anything else. Everything is okay.

Q. Did the asylum officer ask you any specific problem -- questions about whether you had a political problem?

A. Yeah, I think, yeah, he did ask me, and I said no.

Q. Wait a minute. Let me ask that again. I didn't understand what you were saying no to. This is a two

part question. Did the asylum officer ask you any specific questions about political problems and then second, if they asked them, what did you say?

A. Well, actually, I never was asked any question that was clearly in reference to anything political.

Q. Tell us how you've become famous for your artwork in (indiscernible).

A. Well, I have always painted and people who like art have invited me to their, to exhibit.

Q. So, have you in fact put on your own art exhibit in the Columbus area?

A. I've exhibited in Cleveland, in Toledo, Columbus, and I've also been invited to exhibit in Cincinnati. I've also

[p.49]

sent paintings to people in California. I've done lots of murals here.

MR. MUCHNICKI TO JUDGE

Q. This is a matter of convenience for the Court. We included a significant number of samples in black and white. Mr. Santiago has brought the color images. If it would help the Court better appreciate some of his talents, he can hold some of those images up to the tv to look at them.

A. Actually, I did review the black and whites and I'm not an art expert, but it's clear to me that he is a gifted artist.

Q. Okay.

MR. MUCHNICKI TO MR. SANCHEZ-SANTIAGO

Q. Are you aware of the situation back in Mexico today?

A. Well, yeah, through news I receive.

Q. And, is there still, from what you've reviewed of the newspapers, is there still a link between politics and violence in Mexico?

INTERPRETER TO JUDGE

Q. Interpreter request is there still --

A. A link between --

Q. A link.

A. Right. Go ahead.

MR. SANCHEZ SANTIAGO TO MR. MUCHNICKI

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Q. Well, historically politics and artists have never gotten along well.

A. Well, beyond the artist, between -- in terms of, of -- well, are you afraid to go back? Are you afraid to be sent back to Mexico?

Q. Truthfully, yes.

A. And why is that?

Q. Well, we're already here and I know that if I go back, they would do something again and it would be something worse.

A. Why would they do that?

Q. Because amongst other things, they'd know I'm returning to the United States and think that I'm brining back a lot of money. Although that's not true, but they'd still think it and the parties are still rooted there.

A. What do you mean the parties are still rooted there?

Q. Well, because if I'd go back, they'd say come with us, return to this party. Now, the parties are more divided even. Actually, I wouldn't like to return to Mexico.

A. Okay. What's the significance of the parties being even more divided now than they were back in 10 years ago? In terms of the threat to you.

Q. Well, because when you belong to a political party in Mexico, you have a history, and therefore, the risk continues.

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A. And what is the specific risk that you feel you're facing if you go back there? What specific -- what do you think would actually happen to you and your family?

Q. Well, the situation would be very complicated because in the first place, we wouldn't know where to go 'cause now we don't have anything in Mexico. We have nothing in Mexico.

A. Are there any specific threats you feel against you?

Q. Yes. That would be permanent. It would be a permanent situation.

MR. MUCHNICKI TO JUDGE

Q. Nothing further. I would like to indicate, Your Honor, if, if it becomes a critical factor at the end of the hearing, after you've heard all the testimony, we did come up with some additional information about the Green Party in Mexico. It's kind of funny, but if you go on google and just put Green Party, you get more information than if you put Green Party in Mexico. And, we have been previously searching for Green Party in Mexico as combinations. We didn't get much, but just fooling around late last week, we put in Green Party and we did get some additional information that, you know, depending upon where the case stands at the end, I might like permission from you to submit what we just found last Thursday.

Q. Well, why don't you show it to Miss Cromwell. If you think it helps your claim, you better, you better try to get

[p.52]

it to me and I will consider it if I decide it's appropriate to.

MR. MUCHNICKI TO MS. CROMWELL

Q. It shows that the party's popularity continued to (indiscernible) significant minority party and (indiscernible). That's the long and short.

JUDGE TO MR. MUCHNICKI

Q. Did you give it to Miss Cromwell?

A. Yes, I did, Your Honor.

Q. Okay.

JUDGE TO MS. CROMWELL

Q. Miss Cromwell, are you looking at it?

A. I am, Your Honor. It's about seven pages long.

Q. All right. Would you object to it coming into evidence?

A. I would just because it's not timely, Your Honor. It's not that it's an article that was just recently written.

MR. MUCHNICKI TO JUDGE

Q. It is not, Your Honor. We just found --

MS. CROMWELL TO JUDGE

Q. It says winter 1998.

MR. MUCHNICKI TO JUDGE

Q. We just found it.

A. Okay. Well, I'm normally reluctant to take things on the day of the hearing that were available previously. I do think it's in violation of the 10 day rule and if you don't

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enforce that rule, it loses its meaning. On the other hand, if you think it's important for your claim, I don't wanna keep it out.

JUDGE TO MS. CROMWELL

Q. Why don't you fax it to me at the break, Miss Cromwell, and I will make an exhibit and just give it appropriate weight.

A. Okay.

MS. CROMWELL TO MR. MUCHNICKI

Q. So, counsel, are the copies (indiscernible)? Okay.

A. Just why don't you fax that (indiscernible).

Q. You don't have a copy for me?

A. (Indiscernible).

JUDGE TO MS. CROMWELL

Q. You can keep that copy, Miss Cromwell, and just fax me it.

A. Okay. But he doesn't have an extra copy. So, I have to make a copy then.

Q. Okay. Or he could maybe -- he could pull a copy for himself from the same place he got it in the first place.

MR. MUCHNICKI TO JUDGE

Q. Yeah. I could.

MS. CROMWELL TO JUDGE

Q. Oh, okay. I'm sorry, Your Honor. When did you want me to fax it? Now?

[p.54]

A. Let's take a brief recess. We've been going for an hour and a half. Give the interpreter a little break and we'll come back in 10 minutes.

Q. Okay. Thank you, Your Honor.

(OFF THE RECORD)

(ON THE RECORD)

JUDGE FOR THE RECORD

We're back on the record and ready to proceed with cross examination. I did receive the article on the 1997 elections, including the rise of the Green Party in Mexico and that'll be Exhibit 5. I'll give it appropriate weight and enter it into evidence as Exhibit 5.

JUDGE TO MS. CROMWELL

Q. All right. Miss Cromwell, when you're ready, we'll proceed with cross examination.

A. Thank you, Your Honor.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. Did I understand correctly that he election year was 1994?

A. Yes.

Q. And, how long before that did you decide to participate?

A. Not much before. Let's say maybe three, four months before.

Q. In what month in '94 was the election?

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A. September, October. Yes.

Q. And, when were the results of the election released?

A. Well, right after, let's say, after the campaign ends and the elections are held, by the next day.

Q. So, September, October?

A. Yes.

Q. And, when did you stop participating in the party?

INTERPRETER TO JUDGE

Q. Interpreter apologizes. Start or stop?

A. Stop.

Q. When did you what?

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. When did you stop?

A. Immediately after, I stopped participating.

Q. When did you stop participating?

A. I'd say September.

JUDGE TO MR. SANCHEZ-SANTIAGO

Q. Of '94?

A. Yes.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. And when you decided to run for office, when did you start having -- giving speeches?

A. Well, I can't remember the date exactly, but it's in September, about two months we were active in the campaign.

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Q. And were there other people in your party running for office?

A. Well, only the other woman and myself.

Q. What was she running for?

A. Well, well, she was the candidate for the Green Party. She was, let's say, running for senator and I was running for representative, deputy, (indiscernible) deputy.

Q. This was an national election?

A. Yes.

Q. And when did the Green Party come into existence?

A. Well, I don't know exactly the date, but I do know that more or less the party existed two years before I started becoming involved with it.

Q. And when did you start attending meetings for this party?

A. In August.

Q. August of what year?

A. '94.

Q. And, how many people would attend these meetings?

A. Maybe about four hundred people.

Q. And these are meetings, not rallies. Correct?

A. Explain please.

Q. Well, a rally is where people get together and have a public meeting and a get together regarding their platform for the party and a meeting is some people is when people just

[p.57]

get together and discuss the party's agenda.

MR. MUCHNICKI TO JUDGE

Q. I would object in that I don't think that those conform to any grammatical definition that can be translated.

MS. CROMWELL TO JUDGE

Q. I don't have a dictionary in front of me, Your Honor.

A. All right. Well, well, then we'll just, we'll just leave that and move on.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. How does your party go about getting your platform to the people?

A. We have bulletins, flyers, and we, we, we move around the streets announcing our, announcing our party, proclaiming our party.

Q. Now, you said there was an incident where a man (indiscernible) that was I guess in the audience. What was that occasion why he was there?

A. Well, this was a situation where all the people come together where we invite the public in general to participate in our party where we expose our ideas to the people, a rally. There, there is where the man stood, but it's not that he was there alone. There were more people of his followers except that he was their leader.

Q. He was the leader of what?

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A. Of those that were creating havoc and screaming.

JUDGE TO MR. MUCHNICKI

Q. Mr. Muchnicki, In wanna let you know that it's fine if any of the respondents want to step out and they're more comfortable outside at any point. That's absolutely fine. They've been - - a couple of the young children are there. They've been very good. But, if

they're getting antsy or want a break, it's gonna be fine if they wanna step out.

A. You wanna take them outside for a little bit?

Q. It's totally up to you.

A. Thank you, Your Honor.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. Thank you, sir. In fact, I don't understand. Was he part of another political party or was he just a rabble-rouser?

A. No. He was a leader for the other political party.

Q. And what was the party he was the leader of?

A. Of the PRI, P-R-I.

Q. And who was the leader of the Green Party?

A. You mean who had the, the first seat? Because there was various leaders in different situations in different positions.

Q. Who was the president of the Green Party?

A. Mr. Jorge Torres.

Q. And, in your area, who was the area?

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MR. MUCHNICKI TO JUDGE

Q. Objection. You mean geographic area or, or race that he was running in? Could you (indiscernible) area?

A. Well, let's see if he's confused. Overruled. If he's confused, he can ask for clarification.

MR. SANCHEZ-SANTIAGO TO MS. CROMWELL

Q. Who was the leader of the -- Marcella was in (indiscernible).

A. Mister, when -- I'm sorry. What was the name of the man that was the leader of the opposing party who was at your rally?

Q. He never identified himself.

A. And how did you know he was the leader of the opposing party?

Q. Because Marcella would tell me he's the leader, he's the leader of the other party.

A. Were you running against him?

Q. Yeah. He was a rival.

JUDGE FOR THE RECORD

We're out of room on tape one. We're gonna have to go to another tape. Please bear with me while I change tapes.

(OFF THE RECORD)

(ON THE RECORD)

JUDGE FOR THE RECORD

We're back on the record. We're continuing with cross

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examination of the respondent and we just switched from tape one to tape two.

JUDGE TO MS. CROMWELL

Q. Please continue, Miss Cromwell.

A. Thank you, Your Honor.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. Mister, I don't understand why it is that you don't know who your opponent was.

A. Well, because we didn't deal with him directly and neither did the other woman I was with. We, we was separate from that party. We -- and he never ID -- he never identified himself to us.

Q. Was he running for an office or not?

A. No. He was not a candidate per se. This woman told me that he only came to, to spread insults and that he was more of an agitator. May I say something? May I say something? Normally when -- in normal situations, parties send people to disturb meetings of a party when it is beginning to grow so that -- so as to

hinder anymore follows from adhering itself to this group.

Q. Well, did you give campaign speeches?

A. Yeah. I give speeches. More than anything, I would propose ideas and the one who would actually speak would be Marcella.

Q. How often did you give speeches?

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A. I don't understand. Could, could you repeat the question please?

Q. Yes. I ask if you gave speeches. You said you did. How often did you give them?

A. Well, every time Marcella would ask me have you got an idea, are you ready to expose this idea to the public, and then maybe I'd speak to the public once or twice a week.

Q. And were these activities ever published in the local newspaper?

A. Yes, yes, they would get published.

Q. And was your name in these articles?

A. Yes. Yes. And in fact, they would identify me as a painter. Sometimes they would say painter.

Q. Well, sir, I understood you to say that you started receiving phone calls at home that you said

were threats after the election. So, you started getting these in 1994. Is that correct?

A. Yes.

Q. And how often did you get them?

A. Four to five times a week.

JUDGE TO MR. SANCHEZ-SANTIAGO

Q. That's four to five, not 45, correct?

MR. MUCHNICKI TO JUDGE

Q. Correct.

MR. SANCHEZ-SANTIAGO TO JUDGE

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Q. Four to five.

A. Okay.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. And this continued until you left in 1997. Is that correct?

A. Yes.

Q. And was it ever published in the newspaper that you were no longer a part of the Green Party?

A. No. I never published that.

Q. Were there any other elections after 1994 that the Green Party participated in?

A. Oh, yeah. There were and there still are and since the party keeps growing, I guess they're still, they're still at it.

Q. When was the next election after 1994?

A. '99. No. No. It was 2000 'cause it's every six years.

Q. And since you've left, have you read anything about this party?

A. No. I've only seen some things on tv. I haven't actually read anything.

Q. Sir, if you know, was the president of the Green Party ever notified of the threats you and Marcella were receiving?

A. Well, we would comment about it, but Marcella

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never told me if she officially told the president. I -- as far as I'm concerned, I never heard.

Q. Why did you not contact him?

A. Well, because it was very difficult to get in touch with him. He was a very busy man. Everybody wanted to get in touch with him and nobody could ever locate him.

Q. Now, sir, you testified that you went to a bank and you were attacked. Did you have money with you at that time?

A. Yeah, I had.

Q. Was that money taken?

A. Well, actually, they took part of it and my ID cards because the rest of it I had hidden somewhere else. They didn't take much.

Q. Where did you have the other money hidden?

A. Inside my sock.

Q. And did you report this to the police?

A. Yes.

Q. And what did they do?

A. Well, the only went there. They saw me and they didn't do anything. They didn't even report it.

Q. How do you know they didn't report it?

A. Because if they do a report, they leave you a copy. And they didn't leave me anything.

JUDGE TO MS. CROMWELL

Q. You almost done, Miss Cromwell?

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A. I can try.

Q. Well, I think if you could, that would be great.

A. Okay. No problem.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. Now, sir, you attorney asked you about your original asylum application and your interview with the asylum officer. Now, on the application you submitted with your attorney, you state that your family came in 1998. Now, at the interview, you said your family came in 1999. So, when did they actually come to the United States?

A. Well, in the first one, I answered according to what this man had, had, had written. The truth is, I arrived in '97, and my family arrived in '98. This man kept writing things very differently from what I was answering him.

Q. What man are you speaking of?

A. This Mr. Viatoro.

Q. Well, sir, that application does have your application coming in 1998. At the interview, you told the asylum officer they came in 1999.

A. Well, there is some confusion there because my family got here in '98.

Q. On this application that was -- you did with Mr. Viatoro, where did he yet this information that is in your application?

A. Where did Mr. Viatoro get the info?

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Q. Yes.

A. Well, he was always trying to invent stuff. I mean, he even told me to try and apply under another type of application and I said no, I wanna go with my application, with the one you have there that's mine. He would even invent dates that I never gave him.

Q. Did he ever go over this application with you?

A. No. He never showed me any of the documents he'd send in.

Q. No, sir, not the documents. The application. Did he read this application to you?

A. No.

Q. So, then when you went to your interview, why didn't you tell the asylum officer then what you have told the Court?

A. Well, because he would tell me don't say anything else, everything is gonna be okay, and he wouldn't let me say anything else.

Q. Was he at the interview with you?

A. No.

Q. Well, sir, if you didn't know what was in your asylum application, and he told you not to say

anything else, why did you not tell the officer what you told the Court today?

A. Well, I asked myself the same thing. I even commented it to something that this happened to me and it seems

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that my petition is wrong, and the man said to men, yeah, you did wrong, you, you chose the wrong person. Yeah. So, I was commenting with this person and I said oh, gosh, what do I do now, and he says, well, you chose the wrong person there and he said what you need is a lawyer who you can tell the whole story to.

Q. Now, sir, at the interview, you were asked if you belonged to any groups or organizations in Mexico or here, and you said no. Why did you not tell the officer you belonged to the Green Party?

A. Precisely because this person I am, I am referring to told me not to make any comments with regards to this.

MS. CROMWELL TO JUDGE

Q. Your Honor, I'm going to give counsel a copy of the assessment and the officer's notes.

A. Okay.

Q. I don't know if he has the I-589 or the (indiscernible) from the interview. I'll give that to him, too.

A. All right. I'm gonna make that Exhibit 6.

JUDGE TO MR. MUCHNICKI.

Q. Mr. Muchnicki, after you've looked at it, let me know if you have any objection.

A. I would object under the 10 day rule.

Q. Okay. Well, I'm gonna admit it because it's being offered for impeachment, and I think given that, it's appropriate

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to accept it on the day of the hearing. So, that'll be Exhibit 6 to come into evidence.

A. Exhibit 6, Your Honor?

Q. Correct.

A. Okay.

MS. CROMWELL TO JUDGE

Q. I just have one more question, Your Honor.

A. Okay.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. Sir, why did you wait five years after you came to the United States to file for asylum?

A. Well, when I came, I didn't find anybody to help me. I didn't speak any English and time went by and then I came across somebody whom I told about my situation and he said -- and then I asked her what do you think I should do, and he says, well, you gotta do something about it because your situation is pretty grave. It's a pretty serious situation. You need to find somebody to help you, and so I couldn't and I didn't know how to go about that because there was nobody to whom I spoke. I spoke Spanish, didn't speak English, didn't find anybody who was bilingual. And that's when I came across Mr. Viatoro who instead of helping me seems to have hindered my possibility.

MS. CROMWELL TO JUDGE

Q. Your Honor, I'm sorry. I have one more.

A. Okay

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Q. I promise, this is it.

A. Okay.

MS. CROMWELL TO MR. SANCHEZ-SANTIAGO

Q. Well, sir, you told the asylum officer you had a brother here in the United States. Is that correct?

A. Yeah. I do have a brother here.

Q. Was he here when you came?

A. He's been here for a lot of years.

Q. And what is his immigration status?

A. He's an LPR.

MS. CROMWELL TO JUDGE

Q. Thank you, Your Honor, I have no more questions.

A. Okay.

JUDGE TO MR. MUCHNICKI

Q. Any redirect?

A. A couple.

MR. MUCHNICKI TO MR. SANCHEZ-SANTIAGO

Q. You said that Mr. Viatoro never read you the application that he prepared for you. Correct?

A. True.

Q. Did he talk to you about what happened to you in Mexico before he prepared it?

A. Well, I would comment to him about everything and he would say, no, no, no, we don't wanna include any of that stuff, and I would answer to him, yeah, but this stuff happened

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to me, and he says, no, no, it's better you don't include it.

Q. Now, understanding that he didn't read it to you, did he tell you in any way what he had put in the application?

A. Well, he never really commented much about it at all. What he said was this is the application and you'll have to go for an interview. They'll call you to come for an interview. So, you just say you came to the United States. You don't have to give anymore reasons, you don't have to give anymore explanations. You don't have to tell them what happened. This application is okay.

MR. MUCHNICKI TO JUDGE

Q. Nothing further.

A. Okay. Thank you, Mr. Muchnicki.

Q. All right. I'll take brief closing arguments and then I'm gonna decide the case.

A. I have additional witnesses, Your Honor.

Q. What are they gonna add?

A. Well, first of all, the, the two daughters would provide detailed descriptions of the gentleman who trailed -- there was a reference in there about how they were trailed to and from work. They would describe the guy, the guy was wearing a red hat -- I mean, to school. How he followed them to school and followed them home and they reported that to the mother. And both daughters would give -- I haven't talked to them. They'd probably say the same story about what happened there. And maybe Miss

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Cromwell will accept my proffer. It's referenced in the application about the time somebody followed his children home from school. They would testify about that that actually did happen and that the guy wore a red hat.

Q. Okay.

JUDGE TO MS. CROMWELL

Q. I mean, I'd, I'd be willing to accept that as a -- as proffered testimony. I mean, unless you wanna hear directly from the witnesses, Miss Cromwell.

A. I don't, Your Honor, but respondent said there was only one daughter. But we don't know which daughter that was.

MR. MUCHNICKI TO MS. CROMWELL

Q. It was -- well, (indiscernible) both daughters. They were together.

A. But in testimony, he said one daughter. So, I'll take a proffer on that.

JUDGE TO MR. MUCHNICKI

Q. Okay. Is, is, is it one or both?

A. It's both.

Q. Okay. Okay.

A. And then I would like to offer the testimony of his wife, but before we do that, I would request, and I'd ask Miss Cromwell's permission, and I've discussed with the other members of the family that Mr. Santiago's wife would ask that the rest of the family leave the courtroom because there's something

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that she has to tell that they don't know about and she never wants them to know. They've agreed that they will leave at my advising, but I do wanna put her testimony on.

Q. Okay.

JUDGE TO MS. CROMWELL

Q. And, Miss Cromwell, is that all right with you?

A. That's fine, Your Honor.

Q. Okay. That's fine.

MR. MUCHNICKI TO RESPONDENTS

Q. Would all members of the family please leave, other than Mrs. Santiago?

MS. CROMWELL TO MR. MUCHNICKI

Q. Tell them maybe in the door with the double glass doors. Where they were this morning when I got them.

MR. MUCHNICKI TO RESPONDENTS

Q. Go into that room with the double glass doors.

MR. MUCHNICKI TO JUDGE

The 14 year old wanted to show you his two track metals. I think Miss Cromwell said she didn't have a problem with that.

A. Okay. Okay.

Q. He's doing well (indiscernible) highschool in other words. Okay. Let's see. What you're gonna hear is, is something I hadn't heard until this morning. I'll be honest, Your Honor.

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A. Okay. Just, just a moment. I need to put her under oath.

JUDGE FOR THE RECORD

And for the record, all remaining members of the family have stepped out, including the lead respondent and the only remaining person in the courtroom or, or respondent in the courtroom is the spouse of the lead respondent.

JUDGE TO MR. MUCHNICKI

Q. Is that, is that a fair summary?

A. Yes.

Q. Okay.

JUDGE TO MS. BARERRA NAVA

Q. All right. Ma'am, if you could please raise your right hand. Do you solemnly swear that you'll tell the truth, the whole truth, and nothing but the truth here in Court today?

A. Yes. I swear.

Q. Thank you, ma'am. You may sit down.

JUDGE TO MR. MUCHNICKI

Q. And you may examine, Mr. Muchnicki.

A. Thank you, Your Honor. Just a little background, Your Honor, I have spoken to the respondent's wife before and one of the things I always asked her about was why did -- what -- when you left, why was that all of a sudden why you left, and she never -- it must have been some incident that finally caused you to leave. She never gave me one, although when we were out after

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first break, she grabbed me and pulled me aside with tears in her eyes and said to me why did you never talk to me without everyone else present, and I said I never knew I should have talked to you that way, and she then told me something and said you can't tell my family, you can't tell my family. And, I said, well, we won't tell your family, but you do need to talk to the Judge about this. And so that's why it's led to this and so this is fairly spontaneous. It's something she told me today and she was very emotional when she told

me about it. So, I thought it was very important to put it on.

Q. Okay.

A. Okay.

Q. Thank you for your explanation. You may proceed.

MR. MUCHNICKI TO MS. BARERRA NAVA

Q. Miss (indiscernible), after, first of all, you've heard your husband describe a series of threats and phone calls that were made to your family after he got in politics. Did those threats occur?

A. Well, yeah, although I didn't know exactly too much about what went on with his political life. I wasn't too aware of what happened with him as far as his political involvement. Actually, I wasn't very interested. I kept a distance. I was interested in my home, in my children.

Q. Well, were -- did the phone calls start after he became involved in the political campaign?

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A. Well, all I can say is with respect to what's going on here today, I ignore, I'm unaware of a lot of it, and I just know what happened to me. I am not even very sure about dates. I don't remember everything with exact dates. All I know is that at the time, he was involved with the politics. There was an awful lot of odd things happening.

Q. All right. After he -- all right. Let's move to what, what, what you personally experienced. After your husband fled to the United States, did the threatening phone calls to your family stop?

A. No, they didn't stop.

Q. What -- explain to us what the man was saying when you were getting those phone calls.

A. Well, when he left home, when he left home, I thought, well, maybe during a period of a week or a month, perhaps, I thought that all of this oddity, all of this weirdness was over, and now that he was gone, that it was all finished. I knew there was a lot of strange things going on. But I couldn't understand what they were all about. But then, I started getting calls and, and they started saying how I was dressed. They're telling me what time I got back. Whether I'd gone shopping, whether my kids were with me. Well, at this point, I was, I was getting scared. As I say, I'm not sure about the dates, but I just know that during that whole time, I was suffering. I was tormented because my main, my main idea was to protect -- was

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based on protecting my kids. I just knew that there was something very definitely wrong. My kids were being followed. My daughter came back running one day from school saying that she was being followed, and when my kids would tell me they were being followed, I would dismiss it at the beginning thinking well, maybe this is just kid stuff. Well, there is not only my, my, my daughter, my youngest one who came in running that they followed her, afterwards, it turns

out that the same person would constant follow them. There was train tracks near our house in (indiscernible) and this person would hang out around there and then follow them. So, one day, I decided to, and then, the person would also be seen in front of their school. So, I would go out to meet up with my, with my kids when they come back from school and sometimes I wouldn't find them, and it turned out that they had been afraid and taken -- hidden in one of their school friend's houses along the way. Well, strangely enough, during these phone calls that I would have with my husband, every time we have any sort of communication, I would tell him about, you know, these calls and stuff and then strangely, he started asking me what was the voice like. He wanted me to describe him the voice of the -- on the phone. And, so, then I started paying attention to the voice and, and, and, it was in fact a hoarse voice. It was a particular voice. Well, I commented him that yeah it seemed to me like a very deep voice, like if there was something wrong with the throat. It was strange because it was

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like a hoarse voice but it was at the same time strident. I wouldn't know how to describe it.

Q. How about beyond the phone calls, did people approach your home?

A. Yeah, well, after all of this would happen, of course, I started paying more attention and that was -- and I was pretty scared. The, this house wasn't in a very densely populated area. So, I could tell what was going on and I noticed there would be people and they

would park nearby and other times, they would pass by in front of my house and look into my house and they didn't know that I was noticing them.

Q. Okay. I'd like to move to -- I need you to tell the Judge what, what happened to you. Now, your family is outside. They won't hear it. As people come around your house, tell them what you've told me outside.

A. Well, there were sometimes, I think it was maybe twice since I was ever more fearful, they would try to get closer contact with me. Once, a particular instance, they seemed like they were trying to enter, actually, I'd hear people at the, at the wrought iron gates of the house. I could -- and amongst the people that were at the gate of the house, I noticed that one particular voice. It seemed like they were trying to climb over. But thankfully, they left. There was on particular night and it was late. I couldn't sleep. It was -- I was in fear. I felt that there was nothing I could do when I noticed that there was

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somebody inside the house. Before they got too close, we would -- we slept in the back of the house. I went to the back of the house and I locked the key. I locked the kids inside that particular area. Nobody could get out or in. They could of tried to break the windows, but they, they were locked in. I know there was one person. I wouldn't know how to describe him. I know he was thin but strong, and I didn't turn on the light. I didn't wanna call attention to myself. There was really nothing I could do. One of the previous calls I had received had -- they had said that I would be receiving a visit, but I paid no attention to that, and I

did receive a visit, but let's say I was not comforted by that visit.

Q. What happened?

A. They had intercourse with me.

Q. Did you agree to it or did he voice you to have the intercourse?

A. My God, they voiced themself. He -- it was forced.

Q. Is that when you decided to leave and flee to the United States?

A. I -- well, I called the police without the kids knowing about it. Other times, when things had happened, I called the police in front of my kids. But this particular instance, I didn't let my kids know and my husband knows nothing about it. I had rage. I felt impotent. The police there, they're nothing. Police means nothing there. There's no law. If there's a law,

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that law is only corrupt. And, I'm sorry to say this because it is my country.

INTERPRETER TO JUDGE

Interpreter would like repetition of the second part of that phrase. After she mentions her husband.

A. (Indiscernible.)

MS. BARERRA NAVA TO MR. MUCHNICKI

Q. Well, when I told the police, they would light a cigarette. They'd laugh. And I felt really bad because what I needed, I needed help. When my husband previously testified that he would tell, inform the police of events and that he would get no report from the police, that's true. How can, how could you have any proof of something happening if they, if they didn't even make out a report for you? I felt rage. I felt absolutely without any kind of protection. My -- the boys were small. I mean, they were unaware. But, the girls, the girls were a little older and they were becoming aware of what was going on and I felt that I couldn't protect them. I took my kids out of school and I told my husband I don't wanna be here anymore, but I didn't tell him the particulars of what had happened. I know that wherever I went, they would follow. I don't know why, but I knew it. I love my country. I love my country. I was born there. But, I, I can't respect it. I need to be out of there for me, for my kids, for my husband. I could never live in peace there again. But it's in the hands of justice now. I, I -- Your Honor, I would

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ask a big favor of you. Whatever decision you should make, Your Honor, we will accept it because we respect the laws of this country, and we can only be thankful for the time that we have been able to be here. I just ask you for pity like I asked when I was attacked in my house. Please forgive me. And I ask it for my kids who are the most important thing in my life. I ask for compassion, but I don't wanna talk about this anymore. Please forgive me.

MR. MUCHNICKI TO JUDGE

Q. Nothing further.

A. Okay. Thank you, Mr. Muchnicki.

JUDGE TO MS. BARERRA NAVA

Q. Ma'am, would you like a moment to collect yourself before we do cross examination? I don't wanna rush you if you're not ready.

A. No. Oh, I'm fine.

Q. Okay.

JUDGE TO MS. CROMWELL

Q. Miss Cromwell.

MS. CROMWELL TO MS. BARRERA NAVA

Q. Ma'am, what year and month did you come to the United States?

A. Well, as I said before, I'm not very good with dates. I'm gonna try, but I, I am really sorry, but I just don't feel very well. I came to the States, my family came to the

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states in 1998.

Q. Do you remember the month?

A. Maybe beginning of the year. Maybe at the beginning of the year, maybe it was January. Yeah. I think I can remember that month was January.

Q. January of '98 (indiscernible)?

A. Yes. January '98.

Q. And how long after the incident was it that you left?

A. I couldn't really say. I didn't pay, didn't pay any attention to time.

Q. Well, ma'am, was it a week later, a month later, (indiscernible)?

A. Well, I, as I said, I didn't -- I know I didn't wait long because I didn't want my daughters to have to go through what I'd gone before. Maybe three months, but as I say, my kids no -- my family knows nothing about this.

Q. Did you stay in the same home until you left to come to the United States?

A. Yes. I decided to sell it so I could leave.

Q. And did you ever report to the authorities at the school that there was a man standing around the school watching your children?

A. No, I never did. It's not like in the states where they pay a lot of attention to the kids. Maybe over there, they

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don't really care. That's why there is so much injustice and so many children lost.

Q. Now, when this man came into your home and attacked you, did he say anything to you?

A. No. He only said those same words which I had heard them saying my husband. You see, you see. That's why I decided that it had something to do with the phone calls they had previously told me that I'd be receiving a visit. That's all I can say.

Q. Now, ma'am, if your house was being watched, they would know that there wasn't a man in your house. Correct?

A. Yeah. Yeah. That's why I think that maybe those threatening phone calls stopped during a week or during a month.

Q. I'm sorry. The threatening phone calls stopped during the week or month?

A. Maybe they didn't stop. Maybe they never actually stopped. The thing is that since my husband has left, I haven't really paid attention to, to all of those calls. But let's say the phone calls never really stopped.

Q. Well, did you answer the phone every time you had one of these calls?

A. Well, I was the lady of the house. I'd answer the phone. I wouldn't let the kids pick it up. But, yes,

sometimes. And if somebody else answers the phone, maybe they hung up. I can only talk to you about the calls that I would answer.

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Q. So, why would you not pay attention to these calls after your husband left?

A. Maybe, maybe my mind was on my children. My mind was on my loneliness, missing my husband.

MS. CROMWELL TO JUDGE

Q. I have no more questions, Your Honor.

A. Okay. Thank you, Miss Cromwell.

JUDGE TO MR. MUCHNICKI

Q. Any redirect?

A. No, Your Honor.

Q. Okay. Thank you, Mr. Muchnicki. All right. Let's take brief closing arguments now and then let's, let's -- I'm gonna decide the case today, and, Mr. Muchnicki, let me hear your closing and then I wanna discuss how we do the decision. I wanna do this in a manner that's consistent with you and your clients' interests and protecting the wife from disclosing things that are to her family that are things which are things she did not want disclosed. So, let's talk about that after the closing arguments, but let's, let's do the closings first, and if you could just be succinct. I have

listened carefully to the testimony and I've reviewed all the documents.

A. Should I bring the rest of the family back in?

Q. No. Because I think you'll probably wanna address or may address --

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A. Right. Yes. Right. I would. Yeah. Okay. First of all, it's hard for me to be succinct on this point because I feel very strongly about the issue of Mr. Santiago not being prejudiced by Mr. Viatoro. With this said, my office has been involved in the bar association's litigation against Mr. Viatoro for the unauthorized -- UPL committee unauthorized, yeah, unauthorized practice of law committee of the state bar. I know has sued Mr. Viatoro and also Mr. Suarez, the two notarios that my office reported to them. So, with that understanding, I wanna say that if you look at the claim that Viatoro put together, it doesn't make sense because it doesn't explain the focal point of the gang of criminals up this family. And when I sit down and I evaluate a claim, my kind of do a, a comprehensive review of it. I think about -- you know, and that's what when you look at Viatoro's claim, it doesn't make sense. There's something missing as to why this family, which is certainly not one of the (indiscernible) of Mexico suddenly becomes the focal point and that's where like when I first met Mr. Santiago, I pushed him hard to understand there's something missing here, what else is going on. There's something else going on. And that's when he then started talking more about well, there is more that Mr. Viatoro said I did not need to talk about, and I said, well, let me be

that judge. And, and that's when we got into the, the political activity. Now, when you take -- when you understand that essentially -- and that's also why I said you that last fax

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there 'cause that ties it in, about the Green becoming a rising force to challenge PRI. And, if you evaluate this claim, if you follow the basic rule that, you know, something that's -- an application that's prepared by a non-attorney, the statements made therein should not be used as an adverse credibility finding against someone who then hires an attorney. When you look at this claim and you measure it against the background of Mexico, it falls together. Particularly in light of what we -- I found out today, which was the final missing link. But, you look at -- we've provided background information about the violence that was going on, the political violence that was going on in Mexico in the mid-90s and, again, that's -- and that certainly was consistent with the PRI's domination in Mexican politics and how other groups are beginning to make inroads against them. And, we have that in the, in the background conditions. I forget which exhibits, but you've read them, that focus on what was happening in that period around from '94 to '97. And that one article we just faxed you shows that in fact in the president elections of '97, you did in fact have the PRI actually get a lot more, about 10 percent of the vote, where they actually become a voice to deal with. So, you can see where -- not the PRI. Excuse me. The Green. So, you can see where the PRI would have been disposed to pressuring Green out of the system, such as Mr. Santiago. So, when you look at this claim

against the conditions in Mexico in the mid-90s where the PRI was beginning to feel the pressure, it

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makes sense. We do have Mr. Santiago linking this -- the guy from the PRI with the, with the hoarse voice. We do have the documents in the record, Mr. Santiago was the candidate for the Green at that time. You have that, that report that by '97, the Greens had grown to 10 percent. Then you have -- so, then, if you put that gloss on it, it then it starts to make sense why this family becomes the focal point. They're not just another group of, you know, merchants that have some -- victims of a robbery or random criminal violence. It is a more continuous focus here, and, and, and it's not explained by anything other than the political issue. Then when you move on and you see, and Mr. Santiago weaves, and as I said, I was always wondering what -- there had to be a precipitating event that caused the wife to leave after she stayed in Mexico a year. Something -- and she never told me til today, and what was see today, and I, I don't think there's any question about her credibility on this issue. That the continuous -- again, it's the same voice. The continuing thing. You're going to get a visitor. And, you know, here -- how do you like -- we told you this was coming, and then finally the family is driven from Mexico and when you look at the reports for today, violence in politics are still synonymous in Mexico. The use of violence to remove your opponent or intimidate, it still is going on to this day, and maybe it's even worse with the increasing problems with drug gangs and all the, the violence that's attached to politics in Mexico is indisputable. So, when you put

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this all together, and we acknowledge that he has not established an exception to the one year, so, we're talking about withholding, we think that on a preponderance of the evidence standard more likely than not the only thing that explains the continued focus on this family in the mid, the late '90s is the PRI and its attempt to suppress the growth of a new party that was presenting opposition, and it clearly continued. You know, the respondent's wife does confirm that, you know, all this crazy stuff started when he got involved in politics. It wasn't a random merchant. Only political motive makes since. I acknowledge that it was very bad judgment from Mr. Santiago to go to Mr. Viatoro, but as probably been noted, I think, in several 9th Circuit cases, you know, notarios in Mexico do have a standing equivalent to a lawyer which they don't have, obviously, here. And I just hope that that bad mistake he made going to that, quite frankly, I consider him a slimeball, doesn't detract from the rest -- from the, the story, the rest of this, the corroboration from the wife, from the kids, they were being followed. It only makes since within a broader context beyond just, you know, criminal activity, there's something that ties it all together and it's the PRI. And it's the PRI trying to suppress, to do whatever it could, which it was known to do at the time, to suppress the grow of the smaller parties that because the PRI, as we know, Vicente Fox was the first non-PRI president, eventually came to power. The PRI lost control. But it

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all ties in and I ask you, particularly in light of the, the very passionate statement of Maria here that you grant withholding and that you throw aside Mr. Viatoro and all of his contamination of this process, and focus in on how the claim that Mr. Santiago revealed to us, it is right dead on to what was going on in Mexico and it makes sense why and this all ties together, and, therefore, I ask that when you -- and, and based on the preponderance of the evidence, that you grant withholding because the political motivations of the PRI to suppress the small, but growing opposition party was the only thing that explains everything that has happened to this family.

Q. Okay. Thank you, Mr. Muchnicki.

JUDGE TO MS. CROMWELL

Q. Miss Cromwell, what's the Government's position?

A. Your Honor, the Government opposes the grant of asylum or withholding. He has failed to sustain his burden of proof pursuant to 8 CFR 208.13 and the problem with the initial asylum application and his interview as opposed to his current application and testimony. He's coming in with a completely different story. Now, the original application was signed by the respondent. There's no signature there for the preparer. And, counsel has stated that that is what this notario does, but the Government doesn't know that. There's nothing in the record other than counsel's statement regarding Mr. Viatoro that Mr. Viatoro hasn't done anything that is illegal. So, the Government can only

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go on what is before it, and that is the client's application, the interview, and his new application. Excuse me. So, there are two different stories, and the Government doesn't know which one to believe, and, therefore, will not consider either story. Regarding this voice on these phone calls, the husband never heard the person who called his wife after he left. And then the Government also queries why if the election was in October or September of 1994, and respondent started getting these phone calls right after that, after he had withdrawn from the party, he would stay there until 1997, and, and nothing would happen to him, and nothing happened to his family. It appears that the family was just being stalked by some terrible person. There's nothing that occurred during the rape of Mrs. Sanchez that fell under the five enumerated grounds. What he said was -- had nothing to do with that. It was just something regarding to the phone calls that he had, he had made. And, the Exhibit 5, it does tell us things that happened in 1997 and things that happened between opposing parties. But it has not stopped the Green Party. There are still thousands of people in Mexico, at least at the point of this document who participate in the Green Party. It is given public finances, although not as much as the, the large party. It does get public financing. And, it is a growing party. It's growing in Mexico City, Mexico in the outlying communities because the people recognize it as the organization that is against fraud, that the other, the larger political party have

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been guilty of. So, it is a party that's growing and if it's so bad, why are there still people within this political party? I found that respondent's testimony regarding his activities were really very vague. And he's running for an office, but he only gave two speeches, he only became involved in the party about four months before the election, and he decided to run for office, and the main person was this Marcella lady, but there was nothing about the other people in the party, and why there was no discussion with the party about threats other than between he and Marcella. It's, it's questionable. So, based on testimony and documents presented, the Government contends he doesn't merit a grant of -- and I guess he's just asking for withholding, since that's what (indiscernible) ask for, 'cause he's not statutorily eligible for asylum, so, the Government would contend that he's not -- he doesn't merit a grant of withholding, withholding pursuant to the Convention Against Torture and there's been nothing to proffer to show that he is -- qualifies for voluntary departure. So, the Government would be opposed to that also.

MR. MUCHNICKI TO JUDGE

Q. May I briefly reply, Your Honor?

A. I don't normally accept rebuttal from closings, but I'll give you one minute if you wanna reply.

Q. Okay. They're not completely different stories. There's a lot of similarity in the stories. The difference is the motivation. She said nothing happened to my client. He was beaten

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up, attacked and beaten up twice. She says there's nothing that occurred with the rape to tie it. You have the person with that voice warning her that the visitor is coming. It's the same voice that's been throughout here. The fact that it's a growing party and that is not -- that they have prevailed does not mean that there wasn't persecution. It means that -- it shows why the PRI was focused on Green Party members because they had an appeal. Also, my client said he made one to two speeches a week, not one or two speeches. He was quite specific that Marcella was the senate candidate. He was the house of representatives candidate. There's nothing that he didn't answer that Ms. Cromwell didn't ask, and I think when you look again, if -- at the fact that -- look at the application, prepared by an attorney, everything falls into place. And therefore I submit to you, Your Honor, he is -- the family is entitled to withholding, the political motive is the only thing that explains the rape.

A. All right. Well, I appreciate that, Mr. Muchnicki. Let's discuss how to proceed. I thought carefully about the case and I have reviewed the documents and I think you made some good points. However, I don't believe, even though this seems to be a very nice family and he appears to be a gifted artist, I don't believe they're entitled to either asylum or withholding. And I'll explain my reasoning in the oral decision. Unfortunately, I just don't think it's a case that should be granted. With that said, I am sensitive to your request to have the wife testify

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separately from the family. As you probably know, I detail in some great detail the testimony of all the

witnesses in my oral decisions. So, if they come back in, they're gonna hear what she said. I leave it to you whether you wanna waive their presence for the purposes of me entering the oral decision because I don't want to put them in a position of hearing things you don't want them to hear.

Q. I waive their presence.

A. Okay. Then I'm going to go ahead and enter the oral decision now and the spouse of the respondent is present, but for the record, Mr. Muchnicki has waived for the entering of the oral decision the presence of the lead respondent and the other derivative respondents for purposes of protecting them from hearing things that his spouse does not want them to hear or know about. Is that fair summary?

Q. Yes, Your Honor.

A. Okay. Let me move to the oral decision.

JUDGE RENDERS ORAL DECISION

HEARING CLOSED

APPENDIX F

8 U.S.C. § 1158(b)(1):

(b) Conditions for granting asylum

(1) In general

(A) Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of

credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

8 U.S.C. § 1101(a)(42)(A):

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion